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A COMPARISON OF THE MORAL AND POLITICAL
IDEAS OF JEAN-JACQUES ROUSSEAU AND
JEAN-JACQUES BURLAMAQUI

by
Gary L.^{ew} Barnett

A Dissertation Submitted to the Faculty of the
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In Partial Fulfillment of the Requirements
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WITH A MAJOR IN FRENCH

In the Graduate College
THE UNIVERSITY OF ARIZONA

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GRADUATE COLLEGE

I hereby recommend that this dissertation prepared under my
direction by Gary L. Barnett
entitled A COMPARISON OF THE MORAL AND POLITICAL IDEAS OF
JEAN-JACQUES ROUSSEAU AND JEAN-JACQUES BURLAMAQUI
be accepted as fulfilling the dissertation requirement of the
degree of Doctor of Philosophy

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SIGNED: Gary L. Barnett

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TABLE OF CONTENTS

| | Page |
|--|------|
| ABSTRACT | vi |
| I INTRODUCTION | 1 |
| Rousseau and Burlamaqui | 2 |
| Biography | 2 |
| Childhood and formative years | 2 |
| Influence of Geneva | 10 |
| The last years | 13 |
| Works | 21 |
| The Question of the Influence of Burlamaqui on Rousseau | 36 |
| The Scope and Purpose of this Dissertation | 45 |
| II MAN | 51 |
| The Nature of Man | 51 |
| The Distinction between Men and Animals | 52 |
| The Natural Goodness of Man | 56 |
| The Faculties of Man | 59 |
| Passions | 63 |
| The States of Man | 70 |
| The State of Nature | 71 |
| The Social State | 85 |
| The Family | 94 |
| Paternal authority | 94 |
| Marriage | 99 |
| Man's Relationship to God | 106 |
| The Nature of God | 106 |
| Proofs of God's Existence | 110 |
| The Immortality of the Soul | 112 |
| Natural Religion | 116 |
| The Christian Religion | 118 |
| III MORAL VALUES AND THEIR DISCERNMENT | 123 |
| The Discernment of Truth | 123 |
| Reason | 124 |
| Conscience or Moral Instinct | 132 |
| The Morality of Human Actions | 144 |
| Truth and Falsehood | 146 |
| Good and Evil | 151 |
| Virtue and Vice | 157 |

TABLE OF CONTENTS--Continued

| | Page |
|---|------|
| Ethics of Freedom and Happiness | 163 |
| Self-Love | 163 |
| Happiness | 167 |
| Liberty | 174 |
| IV THE RIGHTS AND DUTIES OF MAN | 183 |
| Man's Relationship to Law | 184 |
| Natural Law | 184 |
| Obligation | 199 |
| The General Will | 210 |
| The Social Contract | 217 |
| Civil Law | 225 |
| The Civil Society | 231 |
| The People | 232 |
| Public Education | 240 |
| Civil Religion | 247 |
| Property | 261 |
| V POLITICAL LAW | 271 |
| Sovereignty | 271 |
| Foundation | 271 |
| Limits | 281 |
| Government | 289 |
| The Three Forms | 294 |
| Democracy | 295 |
| Aristocracy | 301 |
| Monarchy | 306 |
| Balance of Powers | 311 |
| The Best Form | 317 |
| International Relations | 326 |
| The Law of Nations | 327 |
| Confederation of States | 336 |
| War | 342 |
| Armies | 351 |
| Captives and Slaves | 355 |
| VI CONCLUSIONS | 362 |
| ABBREVIATIONS | 374 |
| LIST OF REFERENCES | 375 |

ABSTRACT

The major currents or the underlying spirit of the moral and political concepts of Rousseau and Burlamaqui are similar, although there are some distinct differences in their ideas. The common concepts treated by each writer which reflect basic analogies that outweigh the differences entailed in certain aspects of these concepts include their ideas on the family and marriage, luxury, the state of nature, man and his natural goodness, the root cause of evil, the beneficence of nature as created by God, self-love and happiness, the existence of absolute, natural laws or standards of justice, the existence of God and the basic tenets of Christianity, moral values, moral instinct, and the relationship of morals to politics, inner obligation, liberty, civil religion, public education, the best form of government, confederation of states, the social contract as the foundation of political authority, private property, and citizen-soldiers. There are fundamental differences in their ideas on war, the law of nations accepted by the powerful European nations, a natural law revealed by reason alone, the deleterious effects of society on man in his historical development, the cause of amour-propre, the double social contract, and the primacy of reason as man's surest guide in the discovery of truth.

The similarity in their thought is largely attributable to common influences from their native city, the political philosophy of the ancient city-states of Rome and Sparta, the theorists of the natural law school of the seventeenth and eighteenth centuries, the moralists and philosophers of the seventeenth century, some of the prevailing currents of thought of their own century, and from their common Protestant Christian heritage. The differences in their political ideas can be attributed mainly to Burlamaqui's closer adherence to the ideas of his predecessors of the natural law school than that of the more original, individualistic Rousseau. Their moral ideas often reflect Burlamaqui's affinity to the basic moral concepts of the classical seventeenth-century writers, whereas Rousseau, while accepting many of these concepts, often tends to follow some of the new trends of thought of his own century.

The influence of Burlamaqui on Rousseau, while consisting of only a few concepts, is nevertheless important. Burlamaqui's concept of inner obligation lies at the heart of both writers' political systems. Ramifications of the concept (which insists that obligation to obey law must come from within the individual) directly affect their ideas on sovereignty, civil law, public education and civil religion. A comparison of the moral and political ideas of these two important Genevan writers contributes significantly to an understanding of Rousseau's thought.

CHAPTER I

INTRODUCTION

Rousseau and Burlamaqui were both born in Geneva; they both lived in the eighteenth century and were subject to the predominant influences of the philosophical and political writers of that period of time; as is evidenced in their works, both writers read the works of the philosophers of the natural law school and the political writers of antiquity as well as the moralists of the seventeenth century; Rousseau cites Burlamaqui on one occasion to support his opinion on the relationship of man to natural law; all these assertions tend to support the conclusion that a comparison of the moral and political ideas of Rousseau and Burlamaqui might be a profitable undertaking, helpful for a better understanding of the ideas of both men. Others have reached the same conclusion,¹ and summary comparisons of a few of the political ideas of Rousseau and Burlamaqui have been made, but as yet no one has published a comprehensive

1. "The idea of a comparison between these two authors, [such as D. Rodari had made] in point of fact, was not inopportune, since both were born in the same city and both devoted their works to the same problems." (Giorgio Del Vecchio, "Burlamaqui and Rousseau," trans. R. Parsons, Journal of the History of Ideas, XXIII (1962), 420.)

comparison of the moral and political ideas of these two eighteenth-century writers. This is the subject of the present dissertation.

Rousseau and Burlamaqui

There are similarities and differences in the lives and works of Rousseau and Burlamaqui which are germane to an understanding of their moral and political thought. For this reason, this study will begin with a biographical comparison of the two writers followed by a brief consideration of their works that will put in perspective the general trend of their thought.

Biography

Childhood and formative years. Burlamaqui's ancestors came from Italy during the sixteenth century: having declared themselves Protestants, they were forced to flee from Tuscany to France. Jean-Jacques Burlamaqui was a direct descendant of Michel Burlamaqui whose wife was a member of the illustrious Calandrini family. This same Michel Burlamaqui was in Paris in 1572 during the Saint Bartholomew's Day massacre of the Protestants: "Il fut attaqué par des massacreurs, se trouvant avec son beau-frere Calandrini. Ils eurent le bonheur d'écarter les assassins, et d'échapper par une espece de miracle. Mais après avoir sauvé leurs

personnes, ils furent fort en peine pour leurs enfans."¹ Unwittingly, not knowing that the Duc de Guise, their former friend, had instigated the massacre, Michel and Calandrini sent their children to his home in order that they might be protected: "C'est à-peu-près comme si quelques-uns des peres des petits enfans de Bethléem, pour les dérober au massacre, les eussent envoyés cacher au palais d'Hérode."² Happily, the children were not harmed, and Jean-Jacques' future progenitor lived to perpetuate the family line. After the massacre the family moved to Geneva where it settled permanently.

Eighteen years older than Rousseau, Burlamaqui was born in July, 1694, the first of six children.³ His father was a member of the Conseil des Deux-Cents of the city of Geneva; his mother was the daughter of the treasurer general of Geneva. Thus Burlamaqui, born of prominent, wealthy parents, unlike Rousseau, "passa une jeunesse heureuse au sein de sa famille, tantôt à la Cité, tantôt à la campagne où ses parents possédaient deux domaines. ... Elevé par des parents riches, mais austères, Burlamaqui reçut une education

1. Leonard Baulacre, "Eloge Historique de Mr. Burlamaqui," in Principes du droit naturel by J.-J. Burlamaqui (Genève: Chez Barrillot et Fils, 1748), pp. 496-497.

2. Ibid.

3. Bernard Gagnebin, Burlamaqui et le Droit naturel (Genève: Edition de la Frégate, 1944), p. 29.

très soignée."¹ He was a good student: "Non seulement le jeune Burlamaqui faisoit fort exactement ses petites études du college, mais il avoit un talent particulier pour exciter ses amis à en faire autant."²

Perhaps due to this particular talent, after having received his law degree from the Academy of Geneva in 1714, he began teaching law to young people of distinguished families. The following year he married Renée de Chapeaurouge, and in 1720 he was appointed to teach natural law at the Academy of Geneva.

Rousseau was born June 28, 1712 in Geneva when Burlamaqui was studying law at the Academy. His father Isaac Rousseau and his mother Suzanne Bernard were both citizens of Geneva. Isaac, a watchmaker who in the words of his son was "fort habile"³ at his trade, was nevertheless relatively poor. Thus Jean-Jacques did not enjoy the educational and cultural advantages received by Burlamaqui. The contrast between the happy childhood of Burlamaqui and the childhood of Rousseau can best be inferred from Rousseau's introduction to the account of his life: "Je naquis infirme et malade; je coûtai la vie à ma mere, et ma naissance fut

1. Ibid., pp. 30-31.

2. Baulacre, op. cit., p. 500.

3. Jean-Jacques Rousseau, Oeuvres complètes, Vol. I; Les Confessions; Autres Textes Autobiographiques, ed. Bernard Gagnebin and Marcel Raymond (Paris: Bibliothèque de la Pléiade [Gallimard], 1959), p. 6.

le premier de mes malheurs."¹ After the death of his mother, he was raised by his aunt Suzanne Rousseau.

The careful, academic education received by Burlamaqui was also quite different from that of Rousseau. Rousseau recounts that after his sixth year he learned how to read. With his father he would spend many hours reading the novels left by his mother: "Nous lisions tour à tour sans relâche, et passions les nuits à cette occupation. Nous ne pouvions jamais quitter qu'à la fin du volume. Quelquefois mon pere, entendant le matin les hirondelles, disoit tout honteux: allons nous coucher; je suis plus enfant que toi."²

Not all of his reading consisted of novels, however. In 1720 he began reading more serious works such as "L'histoire de l'Eglise et de l'Empire par le Sueur, le discours de Bossuet sur l'Histoire de Venise par Nani, les Métamorphoses d'Ovide, la Bruyère, les mondes de Fontenelle, ses Dialogues des Morts, et quelques tomes de Molière"³--no little task for a boy eight years old. This love of reading continued with him throughout his life.⁴

1. Ibid., p. 7.

2. Ibid., p. 8.

3. Ibid., p. 9.

4. "Il eut dès l'enfance ce goût de lecture et conserva toute sa vie l'habitude de copier des textes choisis." (Robert Derathé, Jean-Jacques Rousseau et la Science politique de son Temps [Paris: Presses Universitaires de France, 1950], pp. 63-64.)

In 1725 while working as an apprentice for the engraver Du Commun, "il s'était pris d'une véritable passion pour la lecture; son maître s'étant aperçu qu'il lisait pendant les heures de travail, Jean-Jacques fut sévèrement puni."¹

While staying with Mme de Warens, his protectress, spiritual advisor and "Maman," Rousseau read many of the major philosophical and political works of his time. He read the works of writers such as Pufendorf, Grotius, Locke and Hobbes, men who also had an influence on Burlamaqui.

Thus it is not so much the content of Rousseau's education which differs from that of Burlamaqui, as the manner in which each was educated: Burlamaqui received instruction from trained professors; Rousseau was mainly self-taught.² For this reason, one might expect to find more originality in the works of the self-educated Rousseau than in the works of Burlamaqui, professor of natural law at the University of Geneva. As is often the case with those who are self-taught, one might also expect to find in the ideas of Rousseau more criticism of and diversity of opinion from

1. André Cresson, J.-J. Rousseau: Sa Vie Son Oeuvre (Paris: Presses Universitaires de France, 1950), p. 5.

2. "Il s'instruit, tout seul, sans maîtres. ... C'est ainsi qu'il apprit un peu d'arithmétique, un peu d'astronomie, un peu de latin, un peu d'algèbre, un peu d'italien. ... Il aime La Bruyère, goûte peu La Rochefoucauld. Il dévore Montaigne, Cicéron, Rollin, du bon, du médiocre. ... Il n'a jamais étudié qu'au hasard sans plan et sans méthode." (A. Brou, Le Dix-Huitième Siècle Littéraire, 2nd ed. [Paris: Pierre Téqui, Libraire-Editeur, 1927], pp. 17-18.)

the commonly accepted ideas on morals and politics than in those of Burlamaqui, defender of the natural law theory of his predecessors.

In 1728, returning from a walk in the early evening and finding the gates of the city of Geneva closed, Rousseau left the city and his employer Du Commun, whom he disliked so much. The next few years he spent wandering from place to place like the protagonist of a picaresque novel. Describing these early years he wrote:

Je parvins jusqu'à l'âge de quarante ans, flottant entre l'indigence et la fortune, entre la sagesse et l'égarement, plein de vices d'habitude sans aucun mauvais penchant dans le coeur, vivant au hasard sans principes bien décidés par ma raison, et distrait sur mes devoirs sans les mépriser, mais souvent sans les bien connaître.¹

These were, nevertheless, important years in the formation of his character. During his stay at Les Charmettes with Mme de Warens, the happiest period of his life, he said, he began to study seriously and systematically: "His own account plainly shows what manner of happiness he actually enjoyed at that time. It came from a strenuous regimen of work. His mornings were given over to hard study, first and foremost of philosophy, then geometry, calculus and the science of nature."² It was also during these early years

1. Jean-Jacques Rousseau, Les Rêveries du promeneur solitaire (Paris: Editions Garnier Frères, 1960), p. 29.

2. Charles William Hendel, Jean-Jacques Rousseau Moraliste (London: Oxford University Press, 1934), I, p. 2.

that he served as a tutor for the two sons of the Abbé de Mably in Lyon, and was secretary to the French ambassador in Venice.

In the realm of human relationships, of class associations, the early experiences of Rousseau and Burlamaqui also offer a contrast. Although born in the same city, their milieux were different. The following remark by Brunetière contrasting Voltaire and Rousseau might also apply to the difference between Rousseau and Burlamaqui: "Et de même que la misère il [Rousseau] a connu les misérables. Voltaire n'a jamais su ce qui se passe dans l'âme d'un paysan, d'un homme du peuple. ... Rousseau l'a su, et il l'a su par expérience."¹ Having experienced some of the misery of the people, Rousseau could sympathize with them. He once related that on hearing the sorry plight of a peasant who had befriended him, "ce fut là le germe de cette haine inextinguible qui se développa depuis dans mon cœur contre les vexations qu'éprouve le malheureux peuple et contre ses oppresseurs."² Burlamaqui, on the other hand, was less sympathetic to the cause of the common people. During an uprising against the governing body of the city of Geneva in 1734, Burlamaqui was very much against the revolting citizenry: "Deux lettres que

1. Ferdinand Brunetière, Etudes critiques sur l'histoire de la littérature française (Paris: Librairie Hachette, 1922), III, p. 277.

2. (Confessions) Oeuvres complètes, I, p. 164.

Burlamaqui adressa de Cassel à Ami Lullin témoignent de ses soucis et de ses inquiétudes et démentent de la façon la plus absolue qu'il ait eu des sympathies pour la bourgeoisie qui s'était revoltée."¹ Rousseau never commented about that particular uprising, but there is little doubt on which side his sympathies would lie in the dispute: he would decidedly have been against the Conseil des Deux-Cents and for the cause of the people. In the Lettres écrites de la Montagne he admonished the people of Geneva for having left the government of the city in the hands of others who had deprived them of their liberty.² His ninth letter of this same work is a strong condemnation of the usurpation of power in Geneva by a small ruling class.

It is probable that this difference in attitude of Rousseau and Burlamaqui was influenced by their environment. Burlamaqui, born of rich, upper-class Genevan citizenry, as a professor of natural law at the University of Geneva taught mainly the sons of the nobility, including such eminent pupils as Prince Frederick of Germany. He had little contact with the misery of the common people as Rousseau did, and thus did not have much opportunity or inclination

1. Gagnebin, op. cit., p. 59.

2. Jean-Jacques Rousseau, Oeuvres complètes, Vol. III; Du Contrat Social, Ecrits Politiques, ed. Bernard Gagnebin and Marcel Raymond (Paris: Bibliothèque de la Pléiade [Gallimard], 1964), p. 881.

to actively engage in championing their cause. It is not to be inferred, however, that Burlamaqui held the common people in disdain, or was by nature haughty or arrogant, for in the words of Bernard Gagnebin, "ce fut aussi une fort belle âme et tous les témoignages concordent sur ce point."¹ In fact, as will be noted from the present study of his works, he held mankind in high esteem and proposed a system of laws and morals designed to promote the happiness of all men. Nevertheless, as a member of a privileged minority, his sympathies seemed to lie with this group.

Influence of Geneva. Although coming from a different social environment, Rousseau and Burlamaqui would of necessity be subject to the same general influences as any citizen of Geneva. These influences, the customs, religious beliefs and commonly held notions of justice of their native city, outweigh any influence deriving from their different social classes. Burlamaqui was born and died in his native land. As a member of the governing body of the city of Geneva, his political thought, as will be shown, was influenced by the civil and political law traditions of his country. His religious thought (to be treated later also) is basically Protestant. In short, Burlamaqui, a lifelong resident of his native land, was definitely influenced by the spirit and thought of his country.

1. Op. cit., p. 81.

Unlike Burlamaqui, Rousseau left his native city at the age of sixteen, and only returned there for brief visits. However, "although most of his adult life was spent in France he was a citizen of Geneva, . . . and never ceased to be proud of his republican heritage."¹ Throughout his life he referred to himself as a "citoyen de Genève."

One of the influences of Rousseau's native city manifest in his political works stems from the Genevan democratic heritage: "Ce qui paraît certain, c'est qu'il y avait eu à Genève une tradition démocratique refoulée par Calvin, et qui explique en partie les tendances politiques de J.-J. Rousseau."² Another critic referring to the childhood of Rousseau has said: "L'enfance de Rousseau se déroule au milieu de ces ardentes discussions [political discussions], qu'il a pu entendre aussi pendant ses visites à Genève. ... En tout cas il n'est pas difficile, lorsqu'on étudie ses idées politiques, d'y trouver quelque parenté avec celles des démocrates genevois."³

1. Frederick Watkins, The Political Traditions of the West (Cambridge: Harvard University Press, 1948), p. 93.

2. Paul Janet, Histoire de la Science politique dans ses Rapports avec la Morale, 2nd. ed. (Paris: Félix Alcan, Editeur, 1887), II, p. 424.

3. Alexandre Choulguine, "Les Origines de l'Esprit National Moderne et Jean-Jacques Rousseau," Annales de la Société Jean-Jacques Rousseau, XXVI (1938), 81-82.

He was also influenced by the moral and cultural atmosphere of Geneva. Throughout his life he contrasted the artificial morality and corruption of sophisticated society with the simple moral code he imputed to his native land. He always looked back upon his homeland with affection and nostalgia: "What made Rousseau return again and again to the first impression of his Swiss homeland was the feeling that there, and there alone, he had still possessed life as a true entity, as an unbroken whole."¹

Derathé has shown that some critics have placed too much importance on the influence of the laws of Geneva on the political works of Rousseau. He points out that Rousseau had little actual knowledge of the constitution of Geneva when writing his early political works, that when he had studied it, he was very critical of the government of Geneva: "Les magistrats intègres de la Dédicace [of the Discours sur l'Inégalité] sont devenus en 1764 les vingt-cinq despotes des Lettres écrites de la Montagne!"² This fact can be admitted without negating a decided influence on Rousseau from his native city. The influence comes not so much from a

1. Ernst Cassirer, The Question of Jean-Jacques Rousseau, trans. Peter Gay (New York: Columbia University Press, 1954), p. 41.

2. Robert Derathé, op. cit., p. 19. Crocker also disputes the idea that Rousseau's "character and thought are to be explained primarily in terms" of the politics of his native city. (Lester G. Crocker, Jean-Jacques Rousseau, Vol. I; The Quest [New York: The Macmillan Company, 1968], p. x.)

systematic study of the government of Geneva,¹ but rather from general concepts and attitudes that he was subject to while growing up. Confirmation of this influence comes from Rousseau's constant favorable reference to the moral atmosphere of his native land. One might best define this influence thus: "Le caractère de Rousseau présente, avec celui des Suisses, plus que des analogies; il faut parler d'une évidente parenté. ... C'est à dire que sa pensée gravite dans l'orbe spirituel de la Suisse."² The same might be said of Burlamaqui.

The last years. From the time that he began teaching at the Academy of Geneva until his death, Burlamaqui was consumptive. In 1739, he asked to be released from his teaching post because of ill health. Soon afterward he was asked to serve as a member of the Petit Conseil: "Mr. Burlamaqui résista longtemps, s'excusant toujours sur la foiblesse de sa santé. Il fallut lui faire une espece de violence, et il ne se rendit qu'à la voix de sa patrie."³ He died of

1. Burlamaqui of course made such a study and it will be shown that his political concepts reflect it. Now whereas Rousseau did not at first have an intimate knowledge of the constitution of Geneva, and whereas there are differences in his political system as compared to the government of Geneva, it will be shown that there are also some basic similarities.

2. Francois Jost, Jean-Jacques Rousseau Suisse: Etude sur sa Personnalité et sa Pensée (Fribourg: Editions Universitaires, 1961), I. p. 13.

3. Baulacre, op. cit., p. 502.

consumption April 3, 1748, the same year Montesquieu published his De l'Esprit des lois. His affliction made him a fellow traveler in life with Rousseau (although they probably never met¹), for the latter also suffered from an illness throughout his life. His aunt Suzanne wrote of his malady: "'De la naissance à la mort, Rousseau ne vida jamais complètement sa vessie et se trouva sans cesse balloté entre les maladies de la rétention incomplète et les tourments de la rétention complète.'"²

During his lifetime, Burlamaqui taught and was associated with some of the important figures of his day. In 1731 he traveled to England and Holland. While in Holland he met Barbeyrac, the translator and commentator of Pufendorf and Grotius: "Ce célèbre professeur parut fort satisfait de notre voyageur, et il a dit à diverses personnes qu'il n'avoit jamais trouvé d'esprit plus juste et plus net."³ At the University of Geneva some of his better known students included, besides Prince Frederick of Germany, Prince George of England, Emer de Vattel (a student in 1733), famous for his treatise on international law,

1. Gagnebin, op. cit., p. 256.

2. Jean Guéhenno, Jean-Jacques: Histoire d'une Conscience, nouvelle édition (Paris: Edition Gallimard, 1962), I, p. 76.

3. Baulacre, op. cit., p. 501.

and Jean Robert Tronchin, "l'un des accusateurs les plus véhéments de Rousseau."¹

During the last years of his life Burlamaqui was occupied with the publication of his Principes du Droit Naturel and the founding of a new school: "Il avoit fort à coeur sur-tout, que l'on établit à Genève une école de dessein."² His reason for founding this school was less for the purpose of making artists than to give to young men "'qui se distinguent aux arts mécaniques, les principes du dessein qui peuvent perfectionner ces mêmes arts.'"³ Gagnebin notes that at the time Burlamaqui wrote these words the city of Geneva had many manufacturing establishments which sold products such as watches, engravings, jewelry, lace, painted cloth, woodwork and the products of the locksmith. It was Burlamaqui's opinion that "'il est sans doute de la dernière importance pour notre ville de ne rien laisser en arrière de tout ce qui peut contribuer au perfectionnement de ces manufactures, et par conséquent beaucoup augmenter notre commerce en donnant une nouvelle réputation à nos ouvriers et à leurs ouvrages.'"⁴

1. Gagnebin, op. cit., p. 65.

2. Baulacre, op. cit., p. 509.

3. Gagnebin, op. cit., p. 75.

4. Ibid.

Rousseau shared Burlamaqui's desire to teach young people a trade: "Je veux absolument qu'Emile apprenne un métier."¹ He preferred a trade, like woodworking, which was above all useful: "Il lui [Emile] faut un métier qui pût servir à Robinson dans son île."² Burlamaqui's project of founding a school of design was based on the same desire: he wanted to teach young men a trade which would be useful and beneficial to them and to the city of Geneva.

Unlike Rousseau, Burlamaqui was also very interested in the arts. Rousseau was on the arts and sciences in his first Discours, well known. Burlamaqui, on the contrary, was a strong and defender of the arts: "De tous les arts, il a marqué une réelle inclination pour l'architecture. Il avait réuni chez lui une très belle collection de livres, de tableaux, de médailles, de pierres et d'estampes, ... et s'était même fait le maître de ceux qui lui semblaient dignes d'être aidés."³

1. Jean-Jacques Rousseau, Emile ou de l'éducation (Paris: Editions Garnier Frères, 1964), p. 229. Rousseau's preference was a trade wherein one used his hands: "Or de toutes les occupations qui peuvent fournir la substance à l'homme, celle qui le rapproche le plus de l'état de nature est le travail des mains. ... Jeune homme, imprime à tes travaux la main de l'homme. Apprends à manier d'un bras vigoureux la hache et la scie, à équarrir une poutre." (Ibid., pp. 226, 233.)

2. Ibid., p. 230.

3. Gagnebin, op. cit., p. 73.

Rousseau shared Burlamaqui's desire to teach young people a trade: "Je veux absolument qu'Emile apprenne un métier."¹ He preferred a trade, like woodworking, which was above all useful: "Il lui [Emile] faut un métier qui pût servir à Robinson dans son île."² Burlamaqui's project of founding a school of design was based on the same desire: he wanted to teach young men a trade which would be useful and beneficial to them and to the city of Geneva.

Unlike Rousseau, Burlamaqui was also very interested in the arts. Rousseau's attack upon the arts and sciences in his first Discours is of course well known. Burlamaqui, on the contrary, was a great admirer and defender of the arts: "De tout temps, Burlamaqui avait marqué une réelle inclination pour les beaux-arts. ... Il avait réuni chez lui une très belle collection de tableaux et d'estampes, ... et s'était même fait le protecteur de ceux qui lui semblaient dignes d'être aidés."³

1. Jean-Jacques Rousseau, Emile ou de l'éducation (Paris: Editions Garnier Frères, 1964), p. 229. Rousseau's preference was a trade wherein one used his hands: "Or de toutes les occupations qui peuvent fournir la substance à l'homme, celle qui le rapproche le plus de l'état de nature est le travail des mains. ... Jeune homme, imprime à tes travaux la main de l'homme. Apprends à manier d'un bras vigoureux la hache et la scie, à équarrir une poutre." (Ibid., pp. 226, 233.)

2. Ibid., p. 230.

3. Gagnebin, op. cit., p. 73.

Burlamaqui's life was one of scholarship, of interest in public affairs and in the betterment of his fellow men. Those who were acquainted with him or who wrote about him usually spoke of him with praise.¹ Baulacre said of him: "C'étoit une belle ame, un coeur noble et généreux, toujours prêt à s'employer pour ceux qui avoient besoin de lui."² He also stated that Burlamaqui had a great love of truth and virtue, that he was a deeply religious man:

Il a toujours montré un grand attachement à la religion. Il l'avoit bien étudiée, il aimoit à en parler, et il y ramenoit autant qu'il pouvoit la conversation. ... Quoique dans son ouvrage imprimé, il ait si bien développé la religion naturelle, il sentoît parfaitement combien il nous importe d'avoir une loi positive, qui lui servît de supplément et qui la confirmât. Il appuyoit beaucoup sur la nécessité de la révélation.³

Burlamaqui remarked to a friend just before his death that the composition of the chapter on the immortality of the soul in his Principes du Droit naturel had been done "avec beaucoup d'affection et de plaisir."⁴

The scholarly, tranquil life of Burlamaqui is a contrast to the mature and last years of Rousseau's

1. Cotellet, for example, states: "Son âme étoit un foyer de bienveillance qui animoit tout ce qui l'approchoit." (Jean-Jacques Burlamaqui, Elémens du droit naturel, nouvelle édition [Paris: Chez Janet et Cotellet, Libraires, 1820], p. ii.)

2. Op. cit., pp. 510-511.

3. Ibid., pp. 512-513.

4. Ibid., p. 513.

existence. In 1744 Rousseau left Venice and his employer the Count of Montagne after violent arguments with the latter, and took up residence in Paris. In 1745 he met Thérèse Levasseur who became his lifelong companion and finally, in the closing years of his life, his wife. It was during this period of time that he became acquainted with Diderot and the Philosophes who were to have such an influence on his ideas. "Here, for the first time, he experienced the true awakening of his intellectual self-awareness."¹ This influence along with the influence of his native city are important in the formation of his thought: "Non sans raison, M. Lanson dit: 'Rousseau a deux patries: Genève et la France.' ... Nous soulignerons encore une fois que c'est à Paris entre 1744 et 1754 que ses idées ont mûri et que son caractère s'est formé définitivement."²

His friendship with Diderot, Voltaire and the "coterie Holbachique" was short lived, however, for although he was influenced by many of their ideas, he also disagreed with them, principally on the subjects of religion, the sciences and the arts. In 1756 Rousseau and Thérèse took up residence at the Ermitage, at the invitation of Mme d'Epinay. After having quarreled with Mme d'Epinay, in

1. Cassirer, op. cit., p. 40.

2. Choulguine, op. cit., pp. 84, 88.

1757 he moved to Montmorency. In 1762 when Emile was burned and condemned, Rousseau fled to Switzerland. Forced to flee from different residences in Switzerland, he passed through Paris and took up residence in England in 1766 at the invitation of David Hume. He quarreled with Hume also and in 1767 returned to France. In 1770 he again took up residence in Paris and lived there in comparative tranquillity until his death July 2, 1778.

The opinions of those who knew Rousseau personally and of critics who have written about him from his time to the present have varied greatly. A lack of objectivity seems to be one of the reasons for this diversity of opinion.¹ Some have painted him in the blackest hues, others have lauded him greatly. In general, it might be said, for purposes of comparison, that Rousseau possessed some of those same qualities for which Burlamaqui had been praised. He had a great affection and concern for the truth: "La vérité générale et abstraite est le plus précieux de tous les biens."² Although he has been guilty of not always telling the truth, he is sincere when he states: "Jamais la fausseté ne dicta mes mensonges, ils sont tous venus de

1. Derathé observes: "Les jugements que l'on a portés sur Rousseau sont rarement exempts de passion, pour ne pas dire de mauvaise foi. ... C'est à croire qu'il est devenu impossible de garder la mesure lorsqu'il s'agit de Jean-Jacques!" (Op. cit., p. 8.)

2. Rousseau, Rêveries, p. 44.

faiblesse."¹ Rousseau also, like Burlamaqui, was concerned for the welfare of his fellow men and proposed the amelioration of society by adherence to a system of moral and political laws.² He was as resolute as Burlamaqui in defending his faith in God and the basic tenets of Christianity against the disbelief of his day.³ The nature of this belief will be treated in chapter two of this study. Also like Burlamaqui, he was accustomed to "méditation dans la retraite."⁴ Baulacre wrote of Burlamaqui: "La foiblesse de sa vue l'empêchoit de lire autant qu'il auroit souhaité. Il étoit obligé de rentrer fréquemment en lui-même, pour

1. Ibid., p. 60.

2. "Tant que les hommes furent mes frères, je me faisais des projets de félicité terrestre; ces projets étant toujours relatifs au tout, je ne pouvais être heureux que de la félicité publique." (Ibid., p. 94.)

3. An interesting note which gives an insight into the similarity of these two men's religious beliefs comes from what has been stated about their relationship to Fénelon. In the Rêveries Rousseau referred to his manner of devotion being like that of Fénelon. (p.28) In another instance he once made reference to the "vertueux Fénelon." (Jean-Jacques Rousseau, Correspondance générale de J.-J. Rousseau, ed. Théophile Dufour [Paris: Librairie Armand Colin, 1933], XIX, p. 279.) On another occasion he showed his admiration for Fénelon by remarking: "Mon Dieu! donne-moi des vertus, et me place un jour auprès des Fénelon, des Caton, des Socrate." (Ibid., p. 57.) In regard to Burlamaqui, Cotellet made this observation which is not devoid of accuracy: "Il a pensé comme Fénelon." (Burlamaqui, Elémens, p. ii.) Baulacre said of Burlamaqui: "C'étoit un coeur véritablement tourné vers cette bienveillance universelle que le célèbre Fénelon, archevêque de Cambrai, a si fort recommandé." (Op. cit., p. 511.)

4. Rousseau, Rêveries, p. 28.

chercher dans la méditation ce que les autres trouvent dans les livres."¹

Works

The three works of Burlamaqui are the Principes du droit naturel, published in 1747 shortly before the author's death; the Principes du droit politique, published posthumously for the first time by Jacob Vernet in 1751; and the Elémens du droit naturel,² published according to Cotelle for the first time in French in 1774 and according to Gagnebin in 1775.³ However, the contents of this last work, the Elémens, were published between 1766 and 1768 under the title of La Suite du droit de la nature as part of the eight-volume edition of the complete works of Burlamaqui by F.-B. De Félice.⁴ The latter said that La Suite

1. Op. cit., p. 503.

2. The original 1747 edition of the Principes du droit naturel is used in this dissertation along with a 1754 edition of the Principes du droit politique, both published by Barrillot et Fils. It will be noticed from the quotations taken from these two works that the orthography is typical of that period of time, whereas those taken from the 1820 Janet and Cotelle edition of the Elémens du droit naturel are written with more modern spelling and accentuation.

3. Del Vecchio states that this work was published posthumously in 1754 in Latin under the title of Elementa juris naturalis, and then appeared in French in 1775. (Op. cit., p. 420.)

4. The 1820 Cotelle edition of the Elémens has been used in this study instead of De Félice's edition because the latter rearranged the order of Burlamaqui's works and even added some sections of his own. For example,

du droit de la nature was compiled from the notes and manuscripts left by Burlamaqui.¹ According to Bernard Gagnebin, "si l'on veut avoir sous les yeux l'oeuvre complète de Burlamaqui, il est donc nécessaire de prendre les deux volumes des Principes et d'y ajouter une des éditions des Eléments."² To this list one can add a letter on marriage written by Burlamaqui to Lord Kilmorey, published in 1761.

Burlamaqui's main work is the Principes du droit naturel. In his preface to the book, he wrote that it was the beginning of a larger work he intended to publish under the name of "Droit de la Nature et des Gens," but that due to ill health he was not able to complete it. Then he added:

he supplanted Burlamaqui's chapter on the duties of a sovereign by one of his own, and left out altogether Burlamaqui's chapter on the moral doctrines to be taught in the state; he changed the title of Burlamaqui's work from Droit politique to Droit des Gens because he considered the former title inappropriate. (J.-J. Burlamaqui, Principes du droit de la nature et des gens; Avec la suite du Droit de la Nature, qui n'avait point encore paru; le tout considérablement augmenté, par M. le professeur de Félice, nouvelle édition, ed. M. Dupin [Paris: Chez B. Warée, 1820], IV, pp. x-xi. He also added so many notes of his own within the text itself written by Burlamaqui (these notes and comments being set off in brackets), that his commentary is more voluminous than Burlamaqui's original text. De Félice's edition has been used in this study primarily for the text of Burlamaqui's letter to Lord Kilmorey on marriage, included in the last volume of his eight volume edition, and for the background De Félice gives on Burlamaqui's ideas.

1. Burlamaqui, Droit de la nature et des gens, II, p. 183.

2. Op. cit., p. 229.

Cependant apprenant que des Copies manuscrites de Cayers que j'avois dressé [sic] pour mon usage particulier, lorsque j'enseignois la Jurisprudence, s'étoient multipliées et répandues d'une manière à me faire craindre que cet Ouvrage ne vit le jour malgré moi et trop défiguré; cette raison, jointe aux sollicitations de plusieurs personnes, m'a enfin déterminé à publier ce premier morceau.¹

The book is of the same nature as other seventeenth and eighteenth-century treatises on natural law, especially those of Pufendorf and Grotius. Burlamaqui acknowledged the similarity of his work to that of Pufendorf when he said that a more detailed exposition of some of the principles he treated could be found in the works of Pufendorf.²

Critics differ in their opinion on the originality of the Principes du droit naturel. Del Vecchio believes that "in these writings one would seek in vain a true, profound originality."³ Gagnebin and Derathé are of the same opinion.⁴ The latter summed up his estimation of Burlamaqui by referring to him as the "Professeur genevois, disciple fidèle, pour ne pas dire servile de Grotius, Pufendorf et

1. Jean-Jacques Burlamaqui, Principes du droit naturel (Genève: Barrillot et Fils, 1747), p. iii.

2. Ibid., p. 204.

3. Op. cit., p. 421. Del Vecchio's judgment is based on the opinion that "his treatises were directly derived from those of Grotius, Pufendorf, Cumberland, Thomasius, Wolff, Barbeyrac." (Ibid.)

4. Derathé concluded that "Burlamaqui n'a été qu'un vulgarisateur de talent, sans aucune originalité." (Op. cit., p. 86.) Gagnebin while discounting any real originality in Burlamaqui's works (op. cit., p. 48), nevertheless

Barbeyrac."¹ This depreciative judgment is misleading, however, for although the "servile" disciple acknowledges his debt to Pufendorf, it is interesting to note that he disagrees with the latter no less than twelve times in his Principes du droit naturel,² and seven times in the Principes du droit politique.³ He disagrees with Grotius four times in the Droit naturel and nine times in the Droit

conceded: "Si le juriste genevois a copieusement puisé dans les écrits de ses prédécesseurs, il a néanmoins su donner à son ouvrage un caractère personnel." (Ibid., p. 218.)

1. Op. cit., p. 460. Derathé, however, weakens the force of his harsh evaluation of Burlamaqui by constantly comparing the latter's ideas with those of Rousseau. Would it not be better to make these comparisons using the original sources (namely, Grotius, Pufendorf and Barbeyrac--the masters) rather than use the second hand ideas of the "servile" disciple?

2. Burlamaqui, Droit naturel, pp. 40, 89, 95, 114, 115, 129, 136, 197, 198, 211, 290, 349. He disagrees with Pufendorf on such important subjects as the reciprocal duties of sovereign and subject: "Ici, comme en quelques autres endroits, Pufendorf donne un peu trop, ce me semble, dans les principes de Hobbes" (p. 114); the distinction between goodness and justice: "la distinction que fait Pufendorf de ces deux qualitez est tout-a-fait arbitraire, et il les confond ensuite lui-même" (p. 129); and the distinction between particular and universal justice: "la manière que Pufendorf l'explique, semble vicieuse" (p. 136).

3. Jean-Jacques Burlamaqui, Principes du droit politique (Genève: Barrillot et Fils, 1754), pp. 47, 62-63, 130-131, 209, 270, 276, 277. Sometimes these differences are minor, such as that concerning the burial of the dead during time of war (p. 277), or the distinction between mixed and irregular governments (pp. 62-63); others, such as the difference of opinion regarding the imputation of an act committed by one commanded by a superior (pp. 130-131), are more fundamental; sometimes he will agree with Grotius and disagree with Pufendorf (p. 209); sometimes he will disagree with them both (p. 276).

politique¹ (this latter work, especially the sections dealing with war and international relations, show the influence of Grotius more than Pufendorf).

Unlike Derathé, Gagnebin and Del Vecchio, Baulacre was of the opinion that the constant meditation Burlamaqui was accustomed to because of his weak eyesight made him "un esprit véritablement original, comme il paroît par ses ouvrages."² Cotellet, judging Pufendorf and Burlamaqui, stated: "Si l'on compare le fonds d'idées qui est commun aux deux auteurs, on trouvera certainement la manière de Burlamaqui plus originale que celle de Pufendorf."³

1. In the Droit naturel he disagrees with Grotius on pages 89, 115, 136 and 214. On the questions of the definition of what constitutes a law (p. 89), the existence of a law of simple permission (p. 115), and the distinction between particular and universal justice, Burlamaqui differs with both Grotius and Pufendorf. On page 214 he disagrees with Grotius alone as to the existence of a positive, voluntary divine law which obligates all men.

In the Droit politique Burlamaqui disagrees with Grotius on pages 176, 190-191, 204-250, 211, 218-219, 222, 241-242, 245-246, 276. He differs with Grotius on such fundamental issues as the natural right of self-preservation when the state is destroyed (p. 176); the right of safe passage of invading armies on neutral territory (pp. 190-191); the justness of singular combat: "On a bien remarqué que les raisons dont se sert ce Grand Homme pour appuyer son sentiment, ou ne prouvent rien, ou bien qu'elles prouvent en même tems, qu'il n'est jamais permis d'exposer sa vie dans un combat, quelque'il soit" (p. 218); and the according of liberty to those who are caught innocently or accidentally in enemy territory after a declaration of war (p. 276).

2. Op. cit., p. 504.

3. Burlamaqui, Elémens, p. v.

Although Cotellet's judgment might not be entirely accurate, it can be concluded that Burlamaqui's works are original compositions. They are not translations with commentary of the works of Pufendorf and Grotius--this was the task which Barbeyrac ably performed. Nor are the Principes du droit naturel and the Principes du droit politique mere adaptations of Pufendorf's Droit de la nature et des gens and Grotius' Droit de guerre et de paix. One finds constant references in Burlamaqui's works to Pufendorf, Grotius and Barbeyrac, but he also cites such authors as Locke, Clarke, Seneca, Hutchinson, Cicero (whom he constantly refers to in support of his opinions), Isocrates, Hobbes, La Bruyère, Sophocles, Juvenal and Tacitus.¹

The Principes du droit politique were published by Jacob Vernet from the notes and manuscripts left by the author. Only the chapter on civil government was completed during Burlamaqui's lifetime. The daughters of Burlamaqui objected to publication of the work, contending that their father never intended his notes for publication.² They

1. Regarding some of the authors who influenced Burlamaqui, Gagnebin remarked: "A chacun, il emprunte le plan général de son ouvrage et de nombreux passages que nous avons relevés, à Barbeyrac sa conception trinitaire du droit naturel, ... à Locke et à Cumberland les preuves de l'immortalité de l'âme et des sanctions de la vie future, à Hutcheson son sens ou instinct moral, à Cumberland et à Pope leur optimisme et leur conception du bonheur." (Op. cit., p. 217.)

2. Ibid., p. 86.

were not successful, however, in their attempt to stop the publication of the book.

The Elémens du droit naturel in content are similar to the Principes du droit naturel. They treat in more detail such concepts as the states of man, natural religion, love of self and the duties of man devolving from the law of sociability. The Elémens did not greatly impress De Félice: "En un mot, quelque estime que j'eusse conçue pour cet ouvrage, je ne la porte pas jusqu'à l'enthousiasme."¹ Cotellet, on the other hand, made up for the lack of enthusiasm shown by De Félice: "Jamais la méthode et la lucidité n'ont été portées plus loin que dans ce livre; et tout honnête homme se fera un vrai plaisir d'apprendre par coeur les Elémens."²

The works of Burlamaqui met with much success after their publication.³ During the eighteenth century sixty editions in eight languages in ten different countries were published. Ray Forrest Harvey in one of the only two books written about Burlamaqui has shown that Burlamaqui was an

1. Burlamaqui, Droit de la nature et des Gens, II, p. 184.

2. Burlamaqui, Elémens, p. iii.

3. "Les Principes de Burlamaqui eurent un succès considérable auprès de tout le monde cultivé de son temps. Les contemporains et les successeurs du jurisconsulte considérèrent ses traités comme un ouvrage classique." (Gagnebin, op. cit., p. 222.)

important influence on the writers of the Constitution of the United States:

The striking similarity of his teachings to the American development of constitutional government is undeniable. For three basic concepts of that system Burlamaqui was a direct or indirect source: the constitution as a fundamental law, the system of checks and balances based upon coordinate departments, and, finally, judicial review."¹

In England he seems to have had a certain influence on Blackstone, on Vattel in Switzerland, and Hübner in Denmark.² It has been noted that in the ten other essays submitted to the Académie of Dijon on the subject of inequality (Rousseau's famous second Discours being one of the entries), Burlamaqui was cited more than any of the other natural law philosophers.³ It would seem also that Burlamaqui was not without influence on the French Revolution.⁴ During the nineteenth century, with the advent of positivism, the works of Burlamaqui and those of the natural law school lost much of their popularity.

1. Ray Forrest Harvey, Jean Jacques Burlamaqui: A Liberal Tradition in American Constitutionalism. (Chapel Hill: The University of North Carolina Press, 1937), p. 142.

2. Gagnebin, op. cit., pp. 271, 299.

3. Ibid., p. 241.

4. "Il n'est donc pas exagéré d'affirmer, avec M. Philippe Meylan que l'Ecole du droit naturel, représentée par Barbeyrac et Burlamaqui, contribua à ces doctrines morales et politiques où s'est formé l'esprit de la Revolution." (Ibid., p. 243.)

Most critics praise the clarity and precision with which Burlamaqui's works are written. De Félice, although critical of Burlamaqui on many points, wrote: "Si l'on veut avoir égard à la précision, à l'ordre, à la méthode, à la clarté, on tirera sûrement de la foule, les Principes du Droit naturel, de M. Burlamaqui, professeur de Genève. Ce livre est clair sans être prolix, précis sans être défectueux, et simple dans toute la force du raisonnement."¹

Like the philosophes of his century, his writings helped to popularize and clarify the ideas of his predecessors: "Il a surtout eu le mérite d'exposer, sous une forme élégante et claire, des principes qu'il emprunte aux jurisconsultes et aux écrivains politiques du siècle précédent."² The clarity of his works is derived in part from Burlamaqui's method of defining each concept he treated.³

1. Burlamaqui, Droit de la nature et des gens, I, p. xxii. Gagnebin, in accord with this judgment notes: "Burlamaqui sut exprimer dans la langue de son temps, en un français clair et pur, ce qu'un Grotius ou un Puffendorf n'avoient pu expliquer que dans d'énormes ouvrages, fourrés d'exemples et de citations puisés dans l'antiquité et les Saintes Ecritures." (Op. cit., p. 300.)

2. Derathé, op. cit., p. 86.

3. "Burlamaqui ... définit l'homme, puisque l'idée du droit, et plus encore celle du droit naturel, sont relatives à la nature de l'homme; il définit le bonheur auquel l'homme aspire naturellement; ... il définit l'évidence contre laquelle les passions humaines ne sauraient prévaloir." (Paul Hazard, La Pensée Européenne au XVIII^e Siècle [Paris: Boivin et Cie, Editeurs, 1946], I, p. 201.)

Although the general tone of his works is that characteristic of a well-reasoned, objective treatise, he at times is capable of expressing the fervor of a Rousseau, as in his indignant condemnation of the inquisition: "Quoi qu'il en soit, il est du moins certain, que jamais Heros n'auroit dompté des monstres plus furieux, ni plus funestes au Genre Humain, que celui qui viendrait à bout de purger la Terre de ces ames scélérates."¹ At other times, when caught up in the enthusiasm of his praise of the Creator and the marvels of His creation, he will describe in emotional, figurative terms his feelings at the sight of such beauty: "Quoi de plus magnifique, par exemple, que ce Théâtre du monde dans lequel nous vivons, et que cette brillante décoration du Ciel et de la Terre, que nous avons devant les yeux, qui nous offre mille et mille Tableaux, toujours agréables, toujours variés?"² In his letter to Mylord Kilmorey on marriage, Burlamaqui uses this same kind of literary language to express some of his thoughts. His works, especially the Principes du droit naturel, are admirable books, well-written, clear and precise, whose contents constitute concepts which are sound and beneficial to

1. Burlamaqui, Droit politique, p. 196.

2. Burlamaqui, Droit naturel, p. 153. This passage is similar to some of the lyric praises of Rousseau on the beauty of nature such as the description in the Profession de Foi du Vicaire Savoyard: "On eût dit que la nature étalait à nos yeux toute sa magnificence pour en offrir le texte à nos entretiens." (Emile, p. 320.)

mankind in general and societies of men in particular, even though the eighteenth-century optimism which pervades these works seems unacceptable to much of our twentieth-century society.

The writings of Rousseau are more varied and voluminous than those of Burlamaqui. The works of Rousseau which have been used in this study to compare his ideas with those of Burlamaqui will be briefly considered in this section of the introduction to put them into perspective (for purposes of comparison), with the works of Burlamaqui.

Rousseau's first work, the Discours sur les sciences et les arts,¹ written as an essay in a contest proposed by the Académie of Dijon, was published in 1750, three years after the publication of Burlamaqui's first work and two years after the latter's death. The thesis which Rousseau supported in this first Discours was in opposition to

1. This writing as well as most of the political works of Rousseau used in this dissertation were read and quoted from the third volume of the Pléiade edition of the complete works of Rousseau cited earlier. For purposes of reference and clarification, the following abbreviations corresponding to the particular work cited from this third volume of Rousseau's complete works will accompany the footnote to the quotation: (DS) Discours sur les Sciences et les Arts; (DI) Discours sur l'Origine et les Fondemens de l'Inégalité parmi les Hommes; (DEP) Discours sur l'Economie politique; (CS) Du Contrat social ou Principes du droit politique; (CS 1st V) Du Contrat social ou Essai sur la forme de la République (1st version); (FP) Fragments politiques; (EASP) Ecrits sur l'Abbé de Saint-Pierre; (LDM) Lettres écrites de la Montagne; (PCC) Projet de Constitution pour la Corse; (CGP) Considérations sur le Gouvernement de Pologne.

Burlamaqui's attitude toward the arts and sciences, referred to previously.

The second work, the Discours sur l'Origine et les Fondements de l'Inégalité parmi les Hommes, was published in 1755. It is in this work that Rousseau made his only reference to Burlamaqui, agreeing with the latter that the concept of natural law is closely related to the nature of man.¹

The Contrat social ou Principes du droit politique was published in 1762. A first version of it, known also as the "Manuscrit de Genève," was drafted in 1760 and differs somewhat from the final version of the Contrat social. For example, chapter two of the first book entitled "De la société générale du genre humain," is not included in the final version and is, according to some critics, a refutation of the article Droit naturel by Diderot which appeared in the Encyclopédie in 1755.² The second part of Rousseau's title to the Contrat social--Principes du droit politique-- might have been taken from Burlamaqui's work by the same

1. Rousseau, (DI) Oeuvres complètes, III, p. 124.

2. Cassirer states of this article: "That the article 'Droit Naturel' in the Encyclopédie is by Diderot and not, as frequently assumed, by Rousseau and that Rousseau sharply criticized this article in the so-called 'Geneva Manuscript' ... seems to me beyond doubt, after a comparison of the texts." (Op. cit., p. 101.)

name.¹ As Rousseau himself affirmed, the contents of his Contrat social were similar to the contents of the works of the natural law philosophers: "Mon livre ... ne peut être considéré que dans le nombre de ceux qui traitent du droit naturel."²

Emile ou de l'éducation was also published in 1762. Although it is primarily a writing on education, it also treats, as do most of Rousseau's works, the moral and political thought of the author. Like Burlamaqui,³ he affirmed that the two subjects were closely related: "With Rousseau politics . . . is but a branch of morals; its object is to develop the individual as a moral being and to enable him to live a good life."⁴ It is for this reason

1. "Non seulement Burlamaqui est cité déjà comme une autorité dans la préface du Discours de l'inégalité, mais le sous-titre du Contrat social: Principes du droit politique, choisi par Rousseau après mainte hésitation, est le titre même du principal ouvrage de ce maître." (Gaspar Vallette, Jean-Jacques Rousseau Genevois [Paris: Librairie Plon, 1911], p. 207.) Derathé notes, however: "Rousseau a donc pu emprunter l'expression Principes du droit politique aussi bien à Montesquieu qu'à Burlamaqui." (Op. cit., p. 395.)

2. Rousseau, (LDM) Oeuvres complètes, III, p. 812.

3. Burlamaqui established his belief in the close relationship between morals and politics in defining the scope of natural law: "Cette Science renferme les principes les plus importants de la Morale, de la Jurisprudence et de la Politique; c'est-à-dire, tout ce qu'il y a de plus intéressant pour l'homme et pour la Société." (Droit naturel, p. 2.)

4. Alfred Cobban, Rousseau and the Modern State (Hamden: Archon Books, 1964), p. 65.

that moral and political thought is to be found also in the epistolary romantic novel La Nouvelle Héloïse, published in 1761.

The Lettre à l'Archevêque de Beaumont, which appeared in Geneva in 1763, defended the religious and moral concepts of Emile against the attacks of Christophe de Beaumont, Archbishop of Paris. The Lettres écrites de la Montagne appeared in 1764. They were a defense of the Contrat social against the criticism of the Lettres écrites de la Campagne written by Robert Tronchin. It was during the writing of these letters that Rousseau's study of the Constitution of Geneva made him realize that some of his former praise of the laws of the city of Geneva was not founded on fact, for he severely denounced the usurpation of power of the ruling class of Geneva in these letters.

Other works used in this study include the Rêveries du Promeneur solitaire, written during the last years of Rousseau's life, finished in 1777, and published in 1780. They furnish an important insight into the moral thought and biographical events in the life of the writer. The Confessions, recounting the life of the author, were read by Rousseau to a select group of friends in 1770. Rousseau, juge de Jean-Jacques, was written between 1772 and 1776. The Discours sur l'Economie politique was published in the fifth volume of the Encyclopédie in 1755. The Extrait du

Projet de Paix perpétuelle and the Jugement of the work of the Abbé de Saint-Pierre were written between 1756 and 1758. His writings treating the latter's Projet pour rendre la paix perpétuelle en Europe contain much of his thought on war and international relations. From 1760 to 1769 Rousseau wrote the Projet de Constitution pour la Corse and in the years from 1771 to 1772 he wrote the Considérations sur le Gouvernement de Pologne. Both of these works constitute a practical application of the theories on government put forth in the Contrat social.

In broad terms, the foregoing works of Rousseau offer many similarities with those of Burlamaqui. In the works of both men, as in the writings of many of their contemporaries such as Montesquieu, Voltaire and Diderot, there is a preoccupation with moral concepts and the amelioration of society by equitable laws and good government. In the writings of Rousseau there is also to be found that kind of optimism, already alluded to in the works of Burlamaqui, typical of eighteenth-century thought.¹ There is in the works of both men a decided influence from the theorists

1. See Carl L. Becker, The Heavenly City of the Eighteenth-Century Philosophers (New Haven: Yale University Press, 1932), p. 65. Mornet believes this optimism to be illusory: "Il est l'illusion de tous les voyageurs, moralistes, romanciers qui s'attendent, avant lui comme après lui, et sans penser à lui, sur les bons sauvages." (Daniel Mornet, Les Origines Intellectuelles de la Révolution Française 1715-1787 [Paris: Librairie Armand Colin, 1933], p. 476.)

of the natural law school--Grotius, Pufendorf, Hobbes, Locke.¹ In the writings of both men, as well as those of Montesquieu and other writers of their time, there is manifested an admiration for the city states of antiquity and the simple, honorable customs of those ancient peoples.² A more detailed consideration of the similarities and the differences in these works is the subject of the present dissertation.

The Question of the Influence of Burlamaqui on Rousseau

Emile Faguet was the first scholar to propose (in 1890) that Burlamaqui had a direct influence on Rousseau. He asserted that the influence of the works of Burlamaqui on Rousseau was to be found in such concepts as the necessity of ultimate authority in matters of religion residing with the sovereign, and the sovereign having absolute power in the realm of any action susceptible to human direction.³

1. Derathé makes this influence on Rousseau the thesis of his book cited earlier: "Nous nous sommes proposés de montrer dans cet ouvrage que la doctrine politique de Rousseau est issue d'une réflexion sur les théories soutenues par les penseurs qui se rattachent à ce qu'on a appelé l'Ecole du droit de la nature et des gens." (Op. cit., p. 1.)

2. "L'amour de Rousseau pour l'antiquité ne laisse de frapper le lecteur du Contrat. Genève, c'est Rome ou Sparte; comparaison courante chez tous ses compatriotes." (Jost, op. cit., p. 292.) "On voit que Burlamaqui, comme la plupart des penseurs de son temps, et Rousseau lui-même, s'est aussi laissé éblouir par le mirage spartiate." (Derathé, op. cit., p. 289.)

3. Emile Faguet, Dix-huitième siècle (Paris: Boivin et Cie., Editeurs, 1890), p. 408.

He observed that Rousseau's idea of a democracy having to confine itself to a relatively small territory was also the idea of Burlamaqui, and maintained that Rousseau's formative years in Geneva were a factor in determining his democratic concept of the sovereignty of the people.¹ He concluded that Rousseau "était donc comme le dernier venu de l'école protestante. Il ne faisait, ce me semble bien, qu'en résumer très brillamment toutes les leçons."² Rousseau, Burlamaqui, Jurieu, Grotius, Pufendorf and Barbeyrac were, according to Faguet, all part of the same political tradition.

Gustave Lanson a few years later was of the same opinion as Faguet. He saw in Rousseau the influence of his native city, and in the Contrat social the influence of the constitution of Geneva.³ He concluded: "Son vrai maître de droit politique, mieux que Montesquieu, ce sera le professeur de Genève Burlamaqui, qui enseignait la liberté et l'égalité naturelles."⁴

1. Ibid., pp. 407-408.

2. Ibid., p. 408.

3. "Les dépôts que cent cinquante ans de la vie genevoise auront laissés dans une suite de générations, se retrouveront dans Rousseau. ... Les théories de son Contrat social seront calquées sur la constitution de Genève, non sur l'état actuel de corruption, mais sur la pureté de l'organisation primitive, ou sur l'idéal plus ou moins représenté par la réalité." (Gustave Lanson, Histoire de la Littérature française [Paris: Librairie Hachette et Cie., 1909], p. 788.)

4. Ibid.

Gaspard Vallette in 1911 defended these opinions of Lanson and Faguet and those of D. Rodari who three years earlier had also concluded that Rousseau was much influenced by Burlamaqui.¹ Vallette agreed that Rousseau was a product of the democratic, protestant atmosphere of Geneva, and was directly influenced by Burlamaqui: "Parmi les théoriciens protestants du droit politique, celui dont l'influence sur Rousseau fut la plus directe et demeure la plus évidente, c'est Burlamaqui. ... Burlamaqui passe donc, à bon droit, pour le maître de Rousseau dans cette science du droit naturel et politique."² As evidence of Burlamaqui's influence on Rousseau, Vallette insisted upon the similarity of Rousseau's ideas with those of Burlamaqui on the state of nature, natural law, the social contract, the general will, and on popular sovereignty.³

Others who concurred in the above opinions regarding the influence of Burlamaqui on Rousseau include Charles Borgeaud who also called Burlamaqui the "maître" of Rousseau,⁴ and Beaulavon who in his edition of the Contrat social

1. See D. Rodari, "G.-G. Burlamaqui e G.-G. Rousseau," Rivista filosofica, XI (1908), 645-666.

2. Vallette, op. cit., p. 207.

3. Ibid., p. 208.

4. "'Les leçons qu'il lui donna se trouvent dans deux ouvrages, les Principes du droit naturel et les Principes du droit politique.'" (Gagnebin, op. cit., p. 253.) Gagnebin's citation is taken from Borgeaud's Histoire de l'Université de Genève, I, p. 517.

(1903) saw the influence of Burlamaqui on Rousseau as that which was "'l'influence la plus immédiate.'"¹

One of the first writers to sustain the contrary opinion was G. Lassudrie-Duchêne. He admitted that Burlamaqui had influenced Rousseau to a certain extent, but added: "Il semble cependant que l'on ait exagéré cette action."² Some years later Philippe Meylan and John Spink agreed with this opinion.³

In 1944 Bernard Gagnebin in one chapter of his book on Burlamaqui examined the question of the influence of Burlamaqui on Rousseau. He summarized the opinions of those who had treated the question up to that time, and then systematically endeavored to refute the arguments of those, beginning with Emile Faguet, who had tried to show that Burlamaqui had had much influence on Rousseau. He concluded that the two political philosophers disagree on the state of nature: "Pour Burlamaqui ... l'état de nature ... est un

1. Gagnebin, loc. cit.

2. Georges Lassudrie-Duchêne, Jean-Jacques Rousseau et le Droit des Gens (Paris: Imprimerie Henri Jouve, 1906), p. 96.

3. Meylan did so in his book Jean Barbeyrac (p. 233). Instead of Burlamaqui being the "maître de droit politique" of Rousseau he stated that "'Montesquieu parmi les contemporains, l'est bien davantage, et Grotius le serait encore avant Burlamaqui.'" (Gagnebin, op. cit., p. 255.) Gagnebin states that Spink, in his thesis Jean-Jacques Rousseau et Genève, also maintained that Burlamaqui had little direct influence on Rousseau.

état de dépendance absolue par rapport à Dieu et nous ne trouvons aucune idée semblable dans Rousseau."¹ They also disagree on the nature of the social contract: whereas Rousseau's concept of the social contract implies total alienation of all rights and obedience to the general will, "pour Burlamaqui, en revanche, il n'y a pas abandon total de tous ses droits, mais union des volontés dans une seule et même personne;"² also, the concept of a double contract--first among the people and then between the people and those or the one appointed to govern them, as conceived by Burlamaqui and the natural law school--is lacking in Rousseau's theory of the social contract since he envisages the association of the people as the only contract: sovereignty must remain with the people: "Rousseau combat l'opinion des 'politiques' (avant tout Montesquieu, mais aussi Locke, Pufendorf et Burlamaqui) qui 'ne pouvant diviser la souveraineté dans son principe, la divisent dans son objet'" (p. 262). Gagnebin also disagrees that Burlamaqui's and Rousseau's concept of civil religion is the same: "Il y a loin de Burlamaqui à Rousseau" (p. 267); only Burlamaqui maintains that the authority of the sovereign is subordinated to that of God.

1. Ibid., p. 258.

2. Ibid., p. 259. Gagnebin concedes, however, that the theory of the general will "se trouve en germe" in Burlamaqui's Principe du droit politique and resembles Rousseau's concept.

Gagnebin acknowledges that Rousseau shares Burlamaqui's notion of civil liberty being better than natural liberty: "Il est probable que Rousseau a retenu cette idée de la lecture des Principes de Burlamaqui" (p. 261). They have similar views, states Gagnebin, on the question of the best form of government; namely, that the best form of government is a relative matter, but both prefer elective monarchies: "Il n'est pas impossible que Rousseau se soit inspiré des Principes du droit politique en construisant cette théorie" (p. 264). There is a similarity in their ideas on the right of the people to resist tyranny, "seulement, il y a une différence fondamentale entre Burlamaqui et Rousseau. Pour le premier l'obéissance est la règle, pour le second, c'est la résistance."¹

Such is Gagnebin's comparison of the ideas of Rousseau and Burlamaqui. These points of comparison have been exposed here in their entirety because this ten-page comparison, brief as it is, constitutes the most detailed textual comparison of the ideas of Rousseau and Burlamaqui that has been made. In his treatment of the question Gagnebin concludes: "Burlamaqui a peut-être exercé une certaine influence sur la pensée de Rousseau, mais il est très

1. Ibid., p. 266. Gagnebin thus concludes on this point: "Si Rousseau a pu s'inspirer de Burlamaqui pour échafauder sa théorie, il l'a développée dans un esprit différent de celui des Principes du droit politique." (Ibid., p. 267.)

exagéré d'en faire le 'maître de droit politique' du Citoyen de Genève" (p. 268). It is possible, he adds, that some of the ideas presented in the Contrat social are found in Burlamaqui's works, but that Rousseau's development of these ideas makes them new and original concepts.

Derathé in his book on Rousseau already cited, also devotes a chapter to the relationship between Rousseau and Burlamaqui. Like Gagnebin he gives a résumé of the different opinions of the critics mentioned earlier who treated the question, and arrives at the same general conclusion that Gagnebin arrived at: "L'influence de Burlamaqui sur Rousseau se réduit, somme toute, à fort peu de chose."¹ Instead of Burlamaqui, Derathé proposes that Pufendorf was the immediate source of Rousseau's political ideas. Rousseau read the works of the natural law philosophers who preceded Burlamaqui before he read the works of Burlamaqui, and since the latter was only a "servile" disciple of his predecessors, Rousseau had little to learn from him: "Avant de lire Burlamaqui, Rousseau avait lu Hobbes, Grotius, Pufendorf et peut-être même Locke. Que pouvait dans ces conditions lui apprendre la lecture des Principes du Droit politique?"²

1. Derathé, op. cit., p. 89.

2. Ibid., p. 88. Although the findings of this study will sometimes tend to weaken Derathé's contention that Burlamaqui's role in influencing Rousseau is minimal,

Del Vecchio in refutation of the article written by Rodari concludes, like Derathé, that there is little originality in Burlamaqui's works, that one must look to his predecessors for an influence on Rousseau, "especially . . . Hobbes, Sidney, and above all Locke."¹ Any influence Burlamaqui had on Rousseau was secondary, says Del Vecchio. "In reality, although there are similarities in the treatises of the two Genevan philosophers (largely explainable by their common sources), there are also considerable differences, which throw into relief the originality of Rousseau, his greater speculative powers, and the intrinsic nature of his genius."²

François Jost concurs with Derathé: "Que Rousseau ne se soit pas inspiré de Burlamaqui, mais de Pufendorf, de Hobbes, de Grotius, M. Derathé l'a démontré."³ Nevertheless, Jost continues to sustain, (and rightly so) as some of the earlier critics such as Lanson and Faguet maintained, that Rousseau is part of a general current of Swiss protestant thought: "L'oeuvre de ces trois écrivains politiques, [Pufendorf,

it will be noticed that Derathé is often cited in this dissertation due to the fact that his well written book gives a good insight into the relationship of Rousseau's political thought to that of the writers of the natural law school.

1. Del Vecchio, op. cit., p. 422.

2. Ibid., p. 423.

3. Jost, op. cit., p. 294.

Hobbes, Grotius] d'inspiration essentiellement protestante, avait été reçue en Suisse avec une particulière faveur-- l'exemple de Burlamaqui le prouve. En y souscrivant à son tour, Jean Jacques Rousseau suit l'instinct de sa nature, le penchant de son peuple."¹ Jost also refers to a similarity in the works of Burlamaqui and Rousseau which until that time had not been mentioned:

Par ailleurs, ses [Rousseau's] déductions, d'une rigueur parfois toute cartésienne, confèrent à bien des parties de l'ouvrage un caractère de solidité surprenante, mais aussi d'âpreté et d'austérité, de rigueur et de rigidité traditionnelle chez les penseurs genevois des XVIII^e siècles. Sous ce rapport, les Principes du droit politique de Jean-Jacques Burlamaqui en sont l'exemple classique.²

The generally accepted opinion of scholars today on the question of the influence of Burlamaqui on Rousseau is that established by Lassudrie-Duchêne, Del Vecchio, Gagnebin and Derathé; namely, that Burlamaqui's influence on Rousseau is negligible. In the recent Pléiade edition of Rousseau's political works Starobinski reflects this contemporary opinion when he writes: "Il apparaît que Rousseau n'a guère été influencé par les idées de Burlamaqui, en ce qui concerne le fond même de la doctrine."³

1. Ibid., pp. 294-295.

2. Ibid., p. 292.

3. Rousseau, Oeuvres complètes, III, p. 1296.

The Scope and Purpose of this Dissertation

Almost all comparisons of the moral and political ideas of Burlamaqui and Rousseau have been made for the purpose of determining the influence of Burlamaqui on Rousseau. Most critics, in their treatment of the question, were sustaining one of two theses; namely, that Rousseau was largely influenced by Burlamaqui, or that he was little influenced by the latter. In some cases this desire to support one of these two theses has prevented an objective comparison of the ideas of Burlamaqui and Rousseau.

In many cases, as well, these comparisons have been based on broad generalizations, not on textual comparison of the ideas in question. In 1944, Bernard Gagnebin, examining the question of the influence of Burlamaqui on Rousseau, indicated that of all the critics who had compared the ideas of the two Genevan philosophers "aucun d'entre eux n'a systématiquement comparé les textes et tiré les conclusions qui s'imposent."¹ The systematic comparison of the ideas of Burlamaqui and Rousseau to which he referred is still to be made. Gagnebin's brief textual comparison can in no wise, of course, be called a comprehensive comparison of the thought of the two Genevan philosophers. Derathé has made a good comparison of their ideas on moral instinct, and has briefly treated other aspects of their respective

1. Gagnebin, op. cit., p. 252.

political concepts, but these comparisons are limited and summary in nature. Some areas of possible fruitful comparison not treated in depth by anyone include Rousseau's and Burlamaqui's ideas on war, marriage, international relations, moral values, slavery, the nature of man and a host of others.

This dissertation constitutes such a comprehensive textual comparison of the moral and political ideas of Rousseau and Burlamaqui, the purpose of which is to determine first of all the exact concepts of each author on the ideas treated, and to show the relationship of these respective concepts. There is validity in Del Vecchio's observation that the similarity of the two Genevan philosophers' ideas is largely explainable by their common sources, and it is for this reason that it is often difficult to determine whether a similar concept held by Rousseau and Burlamaqui evidences an influence of the latter on the former, or whether both men were influenced by a common source. As this study progresses, ideas of the two writers which indicate a possible influence of Burlamaqui on Rousseau will be pointed out, and it will be shown that there are areas of influence which have not yet been treated by the critics previously mentioned, but these considerations are secondary. This dissertation is primarily a comparative study rather than a study of influences, even though it will by

its very nature help clarify the question of the influence of Burlamaqui on Rousseau.

An inclusive comparison of the ideas of Rousseau and Burlamaqui on those subjects which both men treated is pertinent and of interest for several reasons. One of these reasons is to determine their opinion regarding several subjects on which scholars comparing their ideas have disagreed. There are many opinions of critics who have compared Rousseau and Burlamaqui which need investigation. The inference for example, that even the basic doctrine of Rousseau does not resemble that of Burlamaqui is subject to question. It is this kind of a study which can determine the validity or fallacy of such an assertion. Any number of ideas such as those relating to sovereignty, religion, or the state of nature, which have been summarily referred to by those comparing Rousseau and Burlamaqui, need further investigation to determine more exactly the position of the two authors in question on these matters. The similar concepts of Rousseau and Burlamaqui peculiar to them alone among the major political thinkers of their time, and which seem to be a product of their native city also need further investigation. It is hoped that this study may shed some light on these concepts.

Another reason for this kind of study is that it may help to better understand some aspects of the thought

of two important eighteenth-century moral and political thinkers, and to determine their relationship to the main currents of thought of their century. In the case of Burlamaqui this may be particularly helpful since so little has been written about him. A comparative study of his ideas can contribute to a better understanding of his role in eighteenth-century thought, for although he is almost forgotten today, he was during his time a respected political philosopher whose influence on his contemporaries was significant.

The most important purpose for this study is, of course, to give a better understanding of Rousseau's ideas. Much of what has been written by way of interpretation of Rousseau's concepts is in the form of generalizations. Many of these generalizations represent astute observations that are the product of close inspection of Rousseau's thought, but many also lack a solid foundation, as is attested by the fact that critics of equal distinction disagree on their interpretation of some of the basic doctrine of Rousseau. The question of the influence of Burlamaqui on Rousseau is a case in point. It is because of such misunderstanding that a study like this dissertation can be most relevant. When an author has been commented upon and studied as much as Rousseau, important contributions can be made to a better understanding of his ideas by detailed

analysis of his thoughts which have been subject only to generalization and cursory comment. This comparative study constitutes such a detailed investigation of Rousseau's moral and political ideas. An examination of at least one of Burlamaqui's concepts--the unique notion of inner obligation which is at the heart of his political system--will indicate that this same concept is also one of the foundations of Rousseau's political thought, serving as a cornerstone to his notion of the general will.

The scope of this study then, after a brief comparison of the life and works of Rousseau and Burlamaqui and an indication of what work has already been done in this field, is to compare these two writers' ideas in the general areas indicated under the chapter-headings of man, moral values and their discernment, the rights and duties of man and political law. The subjects treated within these topics represent the common ideas of Rousseau and Burlamaqui which are subject to comparison. These common ideas comprise a major portion of both their writings. Of course, there are aspects of Burlamaqui's works (contracts, the law of heredity and possession, details of criminal law, etc.) which Rousseau does not treat, and features of Rousseau's much more extensive works (romantic love in La Nouvelle Héloïse, political economy, greater development of the education of children, etc.) which are not found in Burlamaqui's works.

Some of these concepts are alluded to in this study, but are not compared or examined at any great length.

CHAPTER II

MAN

In accord with the method of composition of political treatises of his day, Burlamaqui began his study of natural law by first considering the nature of man. In beginning his moral and political systems, Rousseau also attached special importance to defining the nature of man. In the only direct reference he ever made to Burlamaqui, Rousseau wrote: "L'idée du droit, dit Mr. Burlamaqui, et plus encore celle du droit naturel, sont manifestement des idées relatives à la Nature de l'homme. C'est donc de cette Nature même de l'homme, continue-t-il, de sa constitution et de son Etat qu'il faut déduire les principes de cette science."¹

The Nature of Man

Man as part of the animal kingdom shares certain features with animals and differs with them in other features. A common method of defining the nature of man is to show wherein man differs from animals. Contrary to a certain mechanistic element of eighteenth-century thought

1. (DI) Oeuvres complètes, III, p. 124.

which reduced these differences to a minimum, Rousseau and Burlamaqui adhered to a traditional Christian distinction between men and animals.

The Distinction between Men and Animals

Both writers defined man as a being of dual nature, composed of body and soul. Rousseau wrote in his Lettre à M. de Beaumont: "L'homme n'est pas un être simple; il est composé de deux substances. ... L'appétit des sens tend à celui ["l'être sensitif"] du corps, et l'amour de l'ordre à celui ["l'être intelligent"] de l'âme."¹ Burlamaqui in Cartesian fashion explained that man resembled the animals in regard to bodily functions, "mais l'homme, outre la disposition merveilleuse de son Corps, a de plus en partage une Ame raisonnable, qui le distingue avantageusement des bêtes."² This concept although commonly accepted, was nevertheless disputed by many eighteenth-century philosophers who conceived of man as being an intricate machine,

1. Jean-Jacques Rousseau, Du Contrat social ou Principes du droit politique (Paris: Editions Garnier Frères, 1962), p. 444. All the quotations in this study from the Lettre à M. de Beaumont are taken from this edition of the Contrat social which contains the text of that letter.

2. Droit naturel, p. 3. In another instance he stated: "L'âme est un esprit, une intelligence unie à un corps." (Elémens, p. 2.) Descartes affirmed the same principle: "Ce moi, c'est-à-dire l'âme, par laquelle je suis ce que je suis, est entièrement distincte du corps." (René Descartes, Discours de la Méthode [Paris: Librairie Philosophique J. Vrin, 1947], p. 33.)

different from animals only in degree of complexity, not composed of two substances but being one entity.¹

Because of his reasoning soul, Rousseau explained, man differs from the animals in another respect: "La Nature seule fait tout dans les operations de la Bête, au lieu que l'homme concourt aux siennes, en qualité d'agent libre. L'un choisit ou rejette par instinct, et l'autre par un acte de liberté."² Burlamaqui also understood that "l'homme est effectivement un Etre libre."³ He insisted on this point in his political works for it was, in his words, "un principe essentiel, et l'une des bases de nôtre Edifice."⁴ Confirmation of the importance that both he and Rousseau attached to the principle of man's free agency will be given in the succeeding chapters of this study.

A third quality which Rousseau and Burlamaqui agreed distinguished man from beast is that of the perfectibility

1. La Mettrie, for example, as a representative of this viewpoint said: "Descartes et tous les cartésiens ... ont fait la même faute. Ils ont admis deux substances distinctes dans l'homme. ... L'homme est une machine. ... L'âme n'est donc qu'un vain terme dont on n'a point d'idée, et dont un bon esprit ne doit se servir que pour nommer la partie qui pense en nous." (Otis E. Fellows and Norman L. Torrey, eds., The Age of Enlightenment: An Anthology of Eighteenth-Century French Literature [New York: Appleton-Century-Crofts, Inc., 1942], pp. 336, 346.)

2. (DI) Oeuvres complètes, III, p. 141.

3. Droit naturel, p. 27.

4. Ibid.

of man. Whereas man is capable of improving and perfecting himself throughout his life, animals when they have reached a certain point of development remain at that approximate level until their death. To support this concept, Burlamaqui quoted from the Spectateur Anglais: "Une bête brute arrive à un certain degré de perfection, au delà duquel elle ne sauroit passer: en très peu d'années elle a acquis toutes les qualitez dont elle est capable; et supposé qu'elle en vécût un million de plus, elle seroit toujours à peu près ce qu'elle est aujourd'hui."¹ According to Rousseau, "sur cette difference de l'homme et de l'animal, il y a une autre qualité très spécifique qui les distingue, et sur laquelle il ne peut y avoir de contestation, c'est la faculté de se perfectionner."² Whereas man as a species and as an individual is capable of perfecting himself, "un animal est, au bout de quelques mois, ce qu'il sera toute sa vie, et son espèce, au bout de mille ans, ce qu'elle étoit la premiere année de ces mille ans."³

A comparison of the wording of this text with the passage cited from Burlamaqui's book, indicates that Rousseau was probably influenced by the concept of the perfectibility of man and the non-perfectibility of animals expressed in

1. Ibid., p. 323.

2. (DI) Oeuvres complètes, III, p. 142.

3. Ibid.

the Spectateur Anglais.¹ He might have read the passage either directly from the Spectateur Anglais, or as quoted in the Principes du droit naturel. It is more probable that he read it in Burlamaqui's work, however, since his idea on the subject of man's perfectibility is expressed in the Discours sur l'Inégalité, and his reference to Burlamaqui in the introduction of this work indicates that he had recently read the Principes du droit naturel.

To the objection that not all men try to perfect themselves, Burlamaqui replied:

"Il est vrai que la plupart des hommes se ravalent en quelque sorte à une vie animale, et se mettent peu en peine de perfectionner leurs facultez. Mais si ces gens-là se dégradent volontairement, cela ne sauroit porter aucun préjudice à ceux qui soutiennent mieux la dignité de leur nature; et ce que nous disons de l'excellence de l'ame n'est moins certain."²

Rousseau indicated that men can even fall lower than animals if they do not continue to better themselves:

1. Starobinski, discussing this text by Rousseau, indicates that Rousseau's idea on the perfectibility of man resembles very much the thoughts expressed by Turgot in one of his letters. In regards to similar ideas expressed by Grimm, he remarked: "Il est donc certain que Rousseau n'a pas été influencé par la publication de Grimm. L'inverse est infiniment plus probable: Grimm aurait eu communication du manuscrit de Rousseau, ou aurait adopté ces idées à son contact." (Rousseau, Oeuvres complètes, III, p. 1318.) Nevertheless, the source of the idea expressed by Rousseau, Turgot and Grimm is probably the Spectateur Anglais. Grimm or Turgot might have read the passage in the Discours sur l'Inégalité, the Principes du droit naturel or the Spectateur Anglais. It seems likely that Rousseau, however, read the quotation in Burlamaqui's work, not in the writings of Grimm or Turgot.

2. Droit naturel, p. 323.

Pourquoi l'homme seul est-il sujet à devenir imbecile? N'est-ce point qu'il retourne ainsi dans son état primitif, et que, tandis que la Bête, qui n'a rien acquis et qui n'a rien non plus à perdre, reste toujours avec son instinct, l'homme rependant par la vieillesse ou d'autres accidens, tout ce que sa perfectabilité lui avoit fait acquérir, retombe ainsi plus bas que la Bête même?"¹

Thus neither Burlamaqui nor Rousseau would accept the contention that because some men (most men in Burlamaqui's estimation) do not seek to better themselves man is not distinguished from the animals by the superiority of his soul, or the capability of perfecting himself. Both, in fact, sustained that this exception was another proof of the principle. If man does not use his faculties to perfect himself, it is by his own volition that he neglects to do so.

The fact that man can descend to an animal existence is another indication that he differs from animals, for his unnatural decadence is apparent. It is apparent because man is basically good and possesses faculties given him by his Creator which enable him to perfect himself and thereby obtain those things for his best good and happiness. Both Rousseau and Burlamaqui believed that man, being the creation of a perfect, all-wise Creator, was naturally good.

The Natural Goodness of Man

Burlamaqui affirms that man naturally desires that which is good, that this desire precedes all reflection,

1. (DI) Oeuvres complètes, III, p. 142.

"et n'est point laissé à notre choix. Il domine en nous, il devient le mobile de toutes nos déterminations."¹ Thus man desires a particular good due to a natural inclination to obtain "le Bien en général. Il ne dépend pas de nous de changer cette pente de la Volonté, c'est le Créateur lui-même qui nous l'a donnée."² Evil has the opposite effect: man feels naturally repulsed by it. He admits that there are some, the products of a refined, inveterate depravity, who seem to be deprived of all natural instinct to do good, but adds: "De tels monstres sont, je l'espère, aussi rares dans le monde moral que les monstres le sont dans le monde physique."³ Men might become depraved but they were not born that way. Such depravity is unnatural for God created man with natural inclinations to desire and to do good.

Armed with such a concept of the natural goodness of man, it is not surprising that Burlamaqui has an optimistic view of society: "Que d'avantages ne nous fournit point le commerce de nos semblables! Quel charme dans leur entretien! Quelle douceur dans l'amitié et dans les autres liaisons du coeur! Dès qu'on n'abuse de rien, presque tout le cours de la vie se trouve parsemé de sentimens agréables."⁴

1. Droit naturel, p. 53.

2. Ibid.

3. Ibid.

4. Ibid., p. 153.

Rousseau, like Burlamaqui, believes that "l'homme est un être naturellement bon, aimant la justice et l'ordre."¹ The natural goodness of man is directly related to God's goodness: "Convaincu de la bonté infinie de l'Etre suprême, il ne peut admettre qu'il ait créé l'homme méchant, qu'il lui ait donné de mauvais penchants."² He thus rejects the notion of original sin, stating: "Il n'y a point de perversité originelle dans le coeur humain, et ... les premiers mouvements de la nature sont toujours droits."³

Burlamaqui, in his letter to Milord Kilmorey, also concludes that since God created man good, there is no original perversity in his heart as some theologians deduce from the story of the fall of Adam:

Je ne saurois comprendre comment cette malheureuse pomme qui tenta nos premiers parents pouvoit être infectée d'un poison si actif et si exalté, qu'elle ait pu totalement changer la constitution de la nature humaine; il faut avoir l'esprit merveilleusement fort pour pouvoir digérer de pareilles idées.⁴

Although Rousseau and Burlamaqui agree that there is no original evil in man, that he is by nature good, they

1. Rousseau, Contrat social, p. 444.

2. Louis Proal, La Psychologie de Jean-Jacques Rousseau (Paris: Librairie Félix Alcan, 1923), p. 94.

3. Rousseau, Contrat social, p. 444.

4. Droit de la Nature et des Gens, V, p. 349.

differ, however, in their opinion about the application of this principle to men living in society. Burlamaqui concludes that since man is naturally good, societies of men are also good. He thus paints an optimistic picture of society wherein men work together in harmony for their pleasure and well-being. Rousseau is not so optimistic. On the contrary, he states: "La nature a fait l'homme heureux et bon mais ... la société le déprave et le rend miserable."¹ It was this concept of the deleterious effect of society on man which Rousseau had in mind when he sustained the paradoxical position that "l'homme étoit bon quoique les hommes fussent méchants."² He had other viewpoints on society (closer to those held by Burlamaqui), which will be treated later at more length, but this idea is basic to his thinking and is in sharp contrast to the thinking of Burlamaqui.

The Faculties of Man

Burlamaqui, true to the method of composition used in all his works, begins his treatment of man's faculties with a definition: "Les Facultez de l'ame ne sont autre chose que les pouvoirs d'agir ou les différentes puissances en elle, et au moyen desquelles elle fait toutes ces opérations."³

1. Jean-Jacques Rousseau, Rousseau Juge de Jean-Jacques (Paris: Librairie Armand Colin, 1962), p. 275.

2. Ibid., p. 31.

3. Droit naturel, p. 6.

The principal faculties of man are understanding, will and liberty. What he terms the faculty of liberty is but an aspect of will, as may be noted in his definition of the latter.

According to Burlamaqui, "la Volonté n'est donc autre chose que cette Puissance de l'Ame par laquelle elle se détermine d'elle même, et en vertu d'un principe d'activité inhérent à sa nature, à rechercher ce qui lui convient, et à agir d'une certaine manière, à faire une action, ou à ne la pas faire, toujours en vuë de son Bonheur."¹ This definition is consistent with Burlamaqui's notion of man being a free agent. The principle serves as one of the foundations of the author's system of natural law since man's being imputable for his actions is a result of his being a moral, free agent.

Burlamaqui also proposed that "la Volonté agit toujours avec Spontanéité, c'est-à-dire de son propre mouvement, de son bon gré et par un principe interne."² Rousseau agreed with this principle of the spontaneity of the will when he wrote: "Ma volonté est indépendante de mes sens."³ His "concept of the self . . . goes beyond sensationalism to insist on its reality as an original, spontaneous

1. Ibid., p. 15.

2. Ibid., p. 17.

3. Emile, p. 339.

activity."¹ He verified the existence of these spontaneous actions of the will by inner feeling:

Vous me demanderez encore comment je sais donc qu'il y a des mouvements spontanés; je vous dirai que je le sais parce que je le sens. Je veux mouvoir mon bras et je le meus, sans que ce mouvement ait d'autre cause immédiate que ma volonté. C'est en vain qu'on voudrait raisonner pour détruire en moi ce sentiment, il est plus fort que toute évidence; autant vaudrait me prouver que je n'existe pas.²

Notice the similarity of this text with the following from Burlamaqui who asserts the same principle: "Consultons donc nous-mêmes. Chacun sent qu'il est bien le maître, par exemple, de marcher ou de s'asseoir, de parler ou de se taire. ... Peut-on nier de bonne foi que, dans le choix des Biens et des Maux, c'est sans aucune contrainte que nous nous déterminons?"³

In Rousseau's mind the principal faculties of man--will, judgment and understanding--are closely related in the process of thinking: "Quelle est donc la cause qui détermine sa [man's] volonté? C'est son jugement. Et quelle est la cause qui détermine son jugement? C'est sa faculté intelligente, c'est sa puissance de juger; la cause déterminante est

1. Lester G. Crocker, An Age of Crisis; Man and World in Eighteenth-Century French Thought (Baltimore: The Johns Hopkins Press, 1959), I, p. 130.

2. Emile, pp. 328-329.

3. Droit naturel, p. 27.

en lui-même."¹ This "faculté intelligente" or the power to judge is what Rousseau calls understanding: "L'entendement n'est que le pouvoir de comparer et de juger."² Thus, according to Rousseau, understanding is the chief faculty of man, the basis of human action. From understanding, or the power to judge and compare comes judgment, and from judgment comes the determination of the will to act in a prescribed manner.

Burlamaqui also defines understanding, the principal faculty of the soul, as a power: "On peut le définir cette faculté ou cette puissance de l'Ame, par laquelle elle apperçoit les choses, et s'en forme des idées, pour parvenir à la connaissance de la vérité."³ He includes in his definition of the term the means whereby man understands; thus, the senses, imagination and memory are all included in what he calls understanding, or the power of the soul to perceive things and form ideas.⁴

Burlamaqui's notion of understanding is in harmony with his idealistic belief in the natural goodness and rectitude of man: "L'Entendement humain est naturellement droit, et ... il a en lui-même la force nécessaire pour parvenir à la connaissance de la vérité, et pour la discerner de

1. Emile, p. 340.

2. Ibid.

3. Droit naturel, p. 6.

4. Ibid., p. 10.

l'erreur."¹ The perfection of understanding consists in the knowledge of truth. To suppose that understanding or reason is not capable of the discernment of truth, would be pernicious to human welfare: "Ceux qui ont prétendu que la Raison et ses facultez étoient tellement dépravées, qu'elles ne pouvoient plus servir à l'homme de guide sûr et fidèle ... n'ont pas fait attention qu'ils prenoient pour base de leur Système un principe destructif de toute vérité, et de la Religion par conséquent."² When man does err or does not make proper use of his understanding it is due to bad education, vicious habits, and above all to unbridled passions.

Passions

Burlamaqui states that passions, like inclinations, are "des mouvemens de la volonté vers certains objets; mais ce sont des mouvemens plus impétueux et plus turbulens, qui tirent l'ame de son assiette naturelle, et qui l'empêchent souvent de bien diriger ses opérations."³ Even when he concedes that passions might in some cases procure advantages, he attaches a negative connotation to them: "Je ne disconviens pas que l'injustice et les passions ne puissent en certains cas procurer quelque plaisir ou quelque avantage.

1. Ibid., pp. 6-7.

2. Ibid., p. 7.

3. Ibid., p. 16.

Mais ... les biens procurés par l'injustice ne sont ni aussi réels, ni aussi durables, ni aussi purs, que ceux qui sont le fruit de la vertu."¹ In this instance passions are used synonymously with injustice. On another occasion he enumerates the evil effects of passions deriving from men being left without guidance: "Laisser les hommes abandonnez à eux-mêmes, c'est laisser le champ libre aux Passions, et ouvrir la porte à l'injustice, à la violence, aux perfidies, aux cruautés."²

Throughout his works, Burlamaqui refers to passions in negative terms. There is only one exception to this observation in all his writings. In that instance he says that all the faculties of the soul, its instincts, inclinations and passions, when guided by reason, enable man to procure happiness.³ Those aspects of passions which are beneficial to man, Burlamaqui prefers to call inclinations: "Les Inclinations sont une pente de la volonté, qui la porte vers certains objets plutôt que vers d'autres, mais d'une manière égale, tranquille, et si proportionnée à toutes ses opérations, que bien loin de les troubler, pour l'ordinaire elle les facilite."⁴

1. Ibid., p. 307.

2. Ibid., p. 159.

3. Ibid., p. 57.

4. Droit naturel, p. 16.

The opposing force which Burlamaqui calls upon to subdue passions and lead men in the paths of rectitude is reason.¹ Reason, the greatest of man's faculties, always has the power to dominate passions: "Quelque force que l'on attribue aux inclinations, aux passions et aux habitudes, il est important d'observer, qu'elles n'en ont jamais assez pour porter invinciblement les hommes à agir contre la Raison. La Raison peut toujours conserver ses droits et sa supériorité."²

Rousseau is less optimistic about the power of reason to control passions. He observes in a maxim worthy of La Rochefoucauld: "L'homme n'est qu'un être sensible qui consulte uniquement ses passions pour agir, et à qui la raison ne sert qu'à pallier les sottises qu'elles lui font faire."³ Nevertheless, he agrees with Burlamaqui that reason should control passions, and confirms his acceptance of the Cartesian concept of the subordinating role of passions to reason when he says: "En le [man] livrant à des passions immodérées, il [God] joint à ces passions la raison pour les gouverner."⁴

1. Crocker points out that this opposition is Cartesian: "The abbé de Saint-Pierre and Burlamaqui also follow the Cartesian opposition of reason and passion." (An Age of Crisis, I, p. 243.)

2. Burlamaqui, Droit naturel, p. 37.

3. (FP) Oeuvres complètes, III, p. 554.

4. Emile, p. 448.

The burden of Rousseau's opinion on passions rests with their negative or harmful aspects. They are a debilitating force: "Ce sont nos passions qui nous rendent faibles."¹ They weaken the efficacy of laws: "Il est impossible d'en faire dont les passions des hommes n'abusent pas."² They destroy patriotism: "Comment l'amour de la patrie pourroit-il germer au milieu de tant d'autres passions qui l'étouffent?"³ In the transition from the natural to the social state, they stifled men's natural inclinations to be good: "Les passions effrénées de tous étouffant la pitié naturelle, et la voix encore faible de la justice, rendirent les hommes avarés, ambitieux et méchants."⁴ The preceptor of Emile, knowing the many disorders caused by passions, and having taught his student to avoid them, predicted of Emile: "Il saura d'avance écarter l'illusion des passions avant qu'elles naissent; et voyant que de tous les temps elles ont aveuglé les hommes, il sera prévenu de la manière dont elles pourront l'aveugler."⁵

Nevertheless, Rousseau also refers to passions favorably, in a manner not characteristic of Burlamaqui's references

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1. Ibid., p. 182.
 2. (CGP) Oeuvres complètes, III, p. 955.
 3. (DEP) Oeuvres complètes, III, p. 260.
 4. (DI) Oeuvres complètes, III, p. 176.
 5. Emile, p. 290.

to the subject. In this respect Rousseau is part of a current of eighteenth-century French thought which does not hold to the strict, classical opposition between reason and passions.¹ Rather than being diametrically opposed, both reason and passions are part of man's constitution and are necessary for his growth and development. Although most of Rousseau's references to passions are by way of condemnation of their abuses, "never does he deny the status of the passions as natural, necessary, and as good in some of their potentialities."² Confirming this assertion, he writes: "Nos passions sont les principaux instruments de notre conservation: c'est donc une entreprise aussi vaine que ridicule de vouloir les détruire; c'est contrôler la nature; c'est réformer l'ouvrage de Dieu."³ Rousseau advocates the subordination of passions to reason, but he does not claim they should be eliminated in man. Like Vauvenargues, he contends: "Quoi qu'en disent les moralistes, l'entendement humain doit beaucoup aux Passions, qui, d'un commun aveu, lui doivent beaucoup aussi: C'est par leur activité, que

1. Vauvenargues, being one of the chief representatives of this current of thought in France, said of passions: "Nous devons peut-être aux passions les plus grands avantages de l'esprit. ... Les passions ont appris aux hommes la raison." (Vauvenargues, Oeuvres, édition nouvelle [Paris: Furne et Cie., Editeur, 1857], I, p. 389.)

2. Crocker, An Age in Crisis, I, p. 245.

3. Emile, pp. 246-247.

notre raison se perfectionne; nous ne cherchons à connaître, que parce que nous désirons de jouir."¹

Burlamaqui would agree with what Rousseau says here, except he would substitute the word "inclinations" for what Rousseau calls passions. Both agree that man must be motivated to progress and perfect his reason. The difference in their concepts is largely a difference of terminology: Rousseau calls both the beneficial and harmful impulses within man passions, whereas Burlamaqui refers to the latter as passions and the former as inclinations. It is true, also, that Rousseau puts more emphasis on the importance of passions or inclinations in motivating man than does Burlamaqui.

Another distinction in their respective ideas on passions stems from their views of the relationship of society to passions. Rousseau states that the only passion natural to man is self-love, that all other passions derive from this primitive feeling, but become pernicious through modification:

La source de nos passions, l'origine et le principe de toutes les autres, la seule qui naît avec l'homme et ne le quitte jamais tant qu'il vit, est l'amour de soi: passion primitive, innée antérieure à toute autre, et dont toutes les autres ne sont, en un sens, que des modifications. En ce sens, toutes, si l'on veut, sont naturelles. Mais la plupart de ces modifications ont des causes étrangères sans lesquelles elles n'auraient jamais

1. Rousseau, (DI) Oeuvres complètes, III, p. 143.

lieu; et ces mêmes modifications, loin de nous être avantageuses, nous sont nuisibles; elles changent le premier objet et vont contre leur principe: c'est alors que l'homme se trouve hors de la nature, et se met en contradiction avec soi.¹

This distinction is basic to Rousseau's moral thought: that which is natural in man--in this case love of self--is good because the Creator specifically endowed man with qualities designed to benefit him; that which man acquires in society which is artificial or unnatural--in this case those passions which are harmful, which are modification of self-love--is detrimental to his well-being.

Burlamaqui, of course, does not blame society for man's disorders. He does not go outside the realm of the individual to impute blame for the evil of passions, and has nothing but praise for society. Rousseau in attributing the faults of the individual to society² differs not only with Burlamaqui, but with many of his contemporaries as well. His concept is typically modern, yet as ancient as the Bible where God, by natural means, visits "the iniquity of the fathers upon the children unto the third and fourth generation."³

1. Emile, p. 247.

2. Rousseau, of course, does not attribute all of man's faults to society. He also believes that men are responsible and accountable for their actions, as will be shown in the next chapter. Nevertheless, he attributes much of the evil in man to society and its influences--something which Burlamaqui does not do.

3. Exodus 20:5.

The States of Man

A common procedure among theorists of the natural law school was to begin their treatises on the laws of nature and society by first considering man in a state of nature. Referring to John Locke, Hazard states: "Il part de l'état de nature, comme Pufendorf l'a fait, comme tout le monde le fait à présent; c'est une mode, presque une manie."¹ Burlamaqui began his book on natural law using this same method. Rousseau also thought it necessary to ascend to an original, primitive state of man to put in proper perspective the laws of society, although admitting the hypothetical nature of the procedure. The state of nature, he says, is "un Etat qui n'existe plus, qui n'a peut-être point existé, qui probablement n'existera jamais, et dont il est pourtant nécessaire d'avoir des Notions justes pour bien juger de nôtre état présent."² Despite his admission of the hypothetical nature of this primitive state, he nevertheless described it in much detail. Burlamaqui, on the other hand, did not spend much time describing the natural state: he used the hypothesis to establish some of man's fundamental rights, then passed quickly to the state of society. He remarked in regard to the origin of society and governments that the question "se réduit à de simples

1. Paul Hazard, La Crise de la Conscience Européenne (1680-1715) (Paris: Boivin et Cie., Editeurs, 1935), II, p. 61.

2. (DI) Oeuvres complètes, III, p. 123.

conjectures plus ou moins vraisemblables. D'ailleurs cette question est plus curieuse qu'utile ou nécessaire."¹

The State of Nature

Burlamaqui proposed that the state of nature was a state of independence among men: "La Société primitive et originaire que la Nature a établie entre les hommes est une Société d'égalité et d'indépendance."² While being independent of his fellow man, man was, nevertheless, completely dependent upon God. Whereas no one in the state of nature had the right to command another, the Creator did have this natural right:

Il n'y a que Dieu seul qui ait par lui-même et en conséquence de sa nature et de ses perfections, un Droit naturel, essentiel et inhérent, de donner des Loix aux hommes, et d'exercer sur eux une souveraineté absolue; il n'en est pas ainsi de l'homme par rapport à l'homme, ils sont tous par leur nature aussi indépendans les uns des autres, qu'ils sont dépendans de l'Empire de Dieu.³

Inasmuch as men in the original state of nature were independent of one another and completely dependent on God, Burlamaqui deduced that the goods of the earth provided for man by the Creator were to be shared by all: "Il est vraisemblable que dans les premiers temps, n'y ayant encore que peu d'hommes sur la terre, les hommes ne s'emparèrent

1. Droit politique, p. 9.

2. Ibid., p. 10.

3. Ibid., pp. 30-31.

que des fruits, et seulement autant qu'il le falloit pour le besoin présent; en sorte que les fonds ou les terres demeuroient toujours en commun."¹

These three conditions--independence of men one of another, dependence on God, and communal rights to property and the goods of the earth--are part of Burlamaqui's hypothetical concept of what might be termed an original state of nature. There are elements introduced into his concept of the state of nature, modifications of the conditions of men's complete independence of each other and their right to property, which might be referred to as a second stage of the natural state, midway between the original state of nature and society: it typifies a certain advancement away from the natural state, but not to what might be called a civil society. Thus, Burlamaqui's concept of the development of man is best understood as consisting of three stages--the original state of nature, the secondary state of nature and the civil society.

Burlamaqui explains the advancement from the original state of nature and the establishing of property rights in the following way:

Le genre humain s'étant considérablement augmenté, il fut nécessaire, afin que chaque père de famille pourvût plus sûrement à ses besoins, qu'on s'emparât en propre des fonds même du terrain; en sorte

1. Elémens, p. 136.

qu'autant d'arpens de terre qu'un homme cultivoit, ou qu'il environnoit de haies, de murailles ou de fossés, lui appartenoient en propre. C'est ainsi que la distinction des biens s'introduisit successivement et peu à peu, proportionnellement aux besoins et aux commodités de la vie.¹

The natural right of property, established in this second stage of the natural state, is derived from the principle of first occupancy and the natural right of man's being able to use the things of the earth which the Creator designed for his benefit: "Dans l'état de la société primitive et naturelle l'on acquiert aussi par droit de premier occupant, les bêtes sauvages, les oiseaux, les poissons; car par le droit naturel, la chasse et la pêche sont permises à tout le monde."²

Unlike Rousseau, Burlamaqui in his considerations of the theoretical state of nature never separates too far this state from the civil state of man. Thus, once having established some of man's basic rights in the independent, original state of nature, Burlamaqui can affirm:

Quand on parle de l'état naturel de l'homme, on ne doit pas seulement entendre par là cet état naturel et primitif, dans lequel il se trouve placé, pour ainsi dire, par les mains de la Nature même; mais encore tous ceux dans lesquels l'homme entre par son propre fait, et qui dans le fond sont conformes à sa nature, et n'ont rien que de convenable à sa constitution et à la fin pour laquelle il est né.³

1. Ibid.

2. Ibid., p. 139.

3. Droit naturel, pp. 48-49.

The reason why these modifications of the original state of nature can be regarded as a part of man's natural state is due to the fact that they are "un effet de sa Liberté naturelle; les nouvelles relations qui en résultent, et les différens états qui en sont une suite, peuvent fort bien être envisagés comme autant d'états naturels."¹

In all the stages of his development, even in the primitive state of nature, Burlamaqui conceives of man as a social being: "Il est bien évident que par la nature tous les hommes sont les uns à l'égard des autres dans un état de société, puisque Dieu lui-même les a placés sur la même terre, qu'ils ne sauroient se passer des secours des autres."² A social being is also, of course, a reasoning being: "Comme la nature de l'homme consiste essentiellement dans la raison, il faut dire que l'état naturel de l'homme, à parler en général, n'est autre chose qu'un état raisonnable."³ This being the case, he distinguishes his theoretical, natural state from any uncivilized state of degeneration to which societies of men might have descended: "Il faut bien distinguer l'état naturel de l'homme d'avec l'abatardissement où il peut tomber par abus et par une suite de

1. Ibid., p. 48.

2. Elémens, p. 7.

3. Ibid., p. 9.

déréglement."¹ He thus rejects any concept of the state of nature being comprised of uncivilized savages as it was sometimes romantically depicted in his day.

Burlamaqui's concept of the state of nature is an ideal: like others of the natural law school, he theorizes on an original state of nature to determine those basic rights accorded to man by natural law; he concludes that the civil society--a just civil society where man enjoys all his natural rights--is the true or best state of nature because its positive laws ensure man his natural liberty: "L'Etat civil qui procure a l'homme une telle liberté, est de tous les états de l'homme le plus parfait, le plus raisonnable, et par conséquent le véritable état naturel de l'homme."² Arbitrary governments of men are the antithesis of that civil state he calls the true natural state, in the same way that degenerate, primitive societies of men where natural liberty and rights are ignored are the antithesis of his theoretical, original state of nature.

In the same way that Burlamaqui's concept of the transition of the original state of nature to an equitable civil society can best be treated in three stages, Rousseau's concept can best be understood by considering this transition as consisting of four stages. Rousseau's

1. Droit naturel, pp. 168-169.

2. Droit politique, p. 16.

comments on the state of nature and the social state have often been misunderstood because of a failure to put his remarks in the context of the state of man's development of which he was speaking.¹ These four stages are the primitive or original state of nature, a later stage of the natural state, the first establishment of civil society, and the ideal civil society as Rousseau conceived it in the Contrat social.²

Like Burlamaqui, Rousseau insists that in the original state of nature "les hommes sont naturellement aussi égaux entr'eux que l'étoient les animaux de chaque espèce."³ Unlike Burlamaqui, however, as Gagnebin has indicated, he does not emphasize the dependence or relationship of man to God in this primitive natural state, perhaps due to the fact that his animalistic concept of man in the original

1. This is one reason for misunderstanding of his ideas; another is his penchant for paradox. Bosanquet remarked about the first Discours: "The whole piece breathes a spirit of prize essay paradox, and though, if sympathetically read, it is seen to be most characteristic of the author, no serious conclusion should be drawn from it as to his hostility to civilization." (Bernard Bosanquet, The Philosophical Theory of the State [London: Macmillan and Co., 1930], p. 80.)

2. This fourth stage is not in Rousseau's notion a natural development of most societies from the natural to the civil state. The natural development, as he indicated in the second Discours, is in three stages ending in the corrupt social state he depicted in that work. This fourth stage represents civil society as it could be, as it should be if man is to retain the natural rights which were his in the state of nature.

3. (DI) Oeuvres complètes, III, p. 123.

state of nature differs from any Biblical account of the creation of man. Burlamaqui's concept does not contradict this account.

Herein lies the main difference between Rousseau's man of nature and Burlamaqui's. Rousseau makes his man in the original state of nature so far removed from civilized man that in some respects this creation of Rousseau resembles an animal as much as he does modern man: "Il fait tant d'efforts d'imagination pour réduire l'homme de la nature à l'état animal, qu'il a ensuite bien de la peine à expliquer l'homme social. ... Il oublie de se demander si ce n'est pas lui-même qui crée cet abîme entre l'homme naturel et l'homme social."¹ Burlamaqui, on the other hand, never deprives man in the state of nature of any of the inherent qualities that man in society possesses. According to Rousseau, "l'homme au fond n'a nul rapport nécessaire avec ses semblables; il peut subsister sans leurs concours dans toute la vigueur possible."² Burlamaqui, of course, believes the opposite is true. Man in the original state of nature, in Rousseau's opinion, had no need of his fellow man because, like an animal, he was essentially an instinctual being: "Il avoit dans le seul instinct tout ce qu'il lui falloit

1. Janet, Histoire de la Science politique, II, p. 420.

2. (EASP) Oeuvres complètes, III, p. 604.

pour vivre dans l'état de Nature."¹ Since the natural man only had need of his instincts, Rousseau would disagree that man in the state of nature was a reasonable being as Burlamaqui affirms. He concludes that "man in the state of nature was a radically different being from civilized man,"² and criticizes his contemporaries for not having recognized the fact: "L'erreur de Hobbes et des philosophes est de confondre l'homme naturel avec les hommes qu'ils ont sous les yeux, et de transporter dans un système un être qui ne peut subsister que dans un autre."³

Another difference between primitive man living alone in the state of nature and man in the civil society lies in the natural strength of the former and his ability to defend himself: "L'homme Sauvage vivant dispersé parmi les animaux, et se trouvant de bonne heure dans le cas de se mesurer avec eux, il en fait bientôt la comparaison, et sentant qu'il les surpasse plus en adresse, qu'ils ne le surpassent en force, il apprend à ne les plus craindre."⁴ Burlamaqui does not conceive of man living alone in the state of nature, but, in contrast to the robust savage depicted by Rousseau, he proposes that if man were left to

1. (DI) Oeuvres complètes, III, p. 152.

2. Mario Einaudi, The Early Rousseau (Ithaca: Cornell University Press, 1967), p. 118.

3. Rousseau, (EASP) Oeuvres complètes, III, p. 611.

4. (DI) Oeuvres complètes, III, p. 136.

himself, "on ne verroit en lui que foiblesse, ignorance et barbarie; à peine pourroit-il satisfaire aux besoins de son Corps; et il seroit toujours exposé à périr, ou de faim, ou de froid, ou par les dents de quelque bête féroce."¹

Both Rousseau and Burlamaqui agree, however, in opposition to Hobbes, that man in the natural state is peaceful, that war is not natural to the state of nature.² According to Burlamaqui, because man is sociable by nature, and because he unites with his fellow man for their common well-being, a state of war is an "état violent et directement contraire à celui de la Société."³ Rousseau agrees that the natural state is one of peace, but for the opposite reason; namely, because the primitive man of nature is a solitary creature who wants to be left alone: "L'homme est naturellement pacifique et craintif, au moindre danger son premier mouvement est de fuir; il ne s'aguerit qu'à force d'habitude et d'expérience. L'honneur, l'intérêt, les préjugés, la vengeance, toutes les passions qui peuvent lui faire braver les périls et la mort, sont loin de lui

1. Droit naturel, p. 43.

2. Hobbes said of the state of nature or the state where men are not bound by civil law: "During the time men live without a common power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man." (Thomas Hobbes, Leviathan or the Matter, Forme and Power of Commonwealth, Ecclesiastical and Civill [Cambridge: The University Press, 1935], p. 83.)

3. Droit naturel, p. 44.

dans l'état de nature."¹ Of Hobbes' concept of the state of nature being a state of war, Rousseau wrote: "Qui peut avoir imaginé sans frémir le système insensé de la guerre naturelle de chacun contre tous? Quel étrange animal que celui qui croiroit son bien attaché à la destruction de toute son espèce!"²

Now, whereas Rousseau and Burlamaqui disagree with Hobbes that the state of nature is a state of war, they both conceive of a stage in man's development from the natural state which is similar to Hobbes' natural state of war. According to Rousseau, this warlike state where man's natural rights were in jeopardy corresponds to the first iniquitous establishments of the civil society. According to Burlamaqui, this stage of man's development was the logical outcome of his development from the natural state: "Perpetuellement divisés en guerre, le plus fort opprimoit le plus foible, ... et ce qu'il faut surtout remarquer, c'est que tous ces maux étoient principalement causés par cette indépendance même dans laquelle les hommes étoient les uns des autres."³ It was this kind of license and injustice which necessitated the formation of the civil society. If men could have

1. (EASP) Oeuvres complètes, III, pp. 601-602.

2. Ibid., p. 611.

3. Droit politique, p. 14.

observed the laws of nature while in the natural state, "rien n'auroit manqué à leur félicité, et ... on n'auroit pas eu besoin d'établir un Pouvoir souverain sur la terre."¹ Nevertheless, Burlamaqui knew that it was impossible for men to remain in the state of nature and acknowledged that the civil society is necessary for their preservation and well-being. Rousseau was of the same opinion despite his criticism of the first despotic civil societies.

The second stage of the state of nature--the first uniting of natural man in social groups--is the stage of man's development which Rousseau preferred: "Ce période du developpement des facultés humaines, tenant un juste milieu entre l'indolence de l'état primitif et la pétulante activité de nôtre amour propre, dut être l'époque la plus heureuse, et la plus durable."² "That was the time of maximal happiness for mankind; it had defects, pains and punishments, but it had no laws beyond parental authority and family discipline."³ In this stage of his development the natural man still had that pity for his fellow man which the primitive man of the state of nature possessed; he united with others of his kind in a free association that

1. Ibid., p. 10.

2. (DI) Oeuvres complètes, III, p. 171.

3. Will and Ariel Durant, Rousseau and Revolution, Vol. X of The Story of Civilization (New York: Simon and Schuster, 1967), p. 29.

was not obligating in the manner civil society obligates men; he formed family relationships which united him with members of his family in the first ties of love, and from these relationships came the first notions of property.¹

Rousseau agrees with Burlamaqui that in the state of nature all have a common right to enjoy the goods of the earth, and that it is use according to need which establishes property right: "C'est le seul travail qui donnant droit au Cultivateur sur le produit de la terre qu'il a labourée, lui en donne par conséquent sur le fond, au moins jusqu'à la récolte, et ainsi d'année en année, ce qui faisant une possession continue, se transforme aisément en propriété."² Locke was of the same opinion.³

It is also at this stage of his development, during these first associations with his fellow man, that man begins to develop those faculties which make him an intelligent being: "Si l'homme vivait isolé, il aurait peu d'avantages sur les autres animaux. C'est dans la fréquentation mutuelle que se développent les plus sublimes facultés et que se montre l'excellence de sa nature."⁴ Paradoxically, it is after the acquisition of the "most sublime" of his

1. (DI) Oeuvres complètes, III, pp. 167-171.

2. Ibid., p. 173.

3. Hazard, La Crise de la Conscience Européenne, II, p. 64.

4. (FP) Oeuvres complètes, III, p. 477.

faculties and the establishment of the rights of property that man enters that state of his development which is so pernicious to him.

This third stage represents for Rousseau mainly the social state as it emerged from the natural state, but also to a certain extent society as he saw and criticized it in his day. In the Discours sur l'Inégalité he has nothing good to say about this stage of man's development. He compares this social state of man to the degenerate state of domesticated animals: "Il en est ainsi de l'homme même: En devenant sociable et Esclave, il devient foible, craintif, rampant, et sa manière de vivre molle et efféminée achève d'enervier à la fois sa force et son courage."¹ It was at this stage that men lost their natural feelings of pity for others, that the strong enslaved the weak, that natural equality was replaced by despotism and inequality.²

To stop at this point, to consider Rousseau's opinion on society complete as it is expressed in the second Discours would make many of Rousseau's other thoughts on society contradictory. Consider, for example, the following passage: "Ce n'est qu'en devenant sociable qu'il [man] devient un être moral, un animal raisonnable, le roi des autres animaux, et l'image de Dieu sur la terre."³ This

1. (DI) Oeuvres complètes, III, p. 139.

2. Ibid., pp. 188-191.

3. (FP) Oeuvres complètes, III, p. 477.

thought would seem to contradict the long harangue on society in the Discours sur l'Inégalité. It does not, however, if one applies it to a fourth stage of the development of man, a social state devoid of the iniquities enumerated in the second Discours, a social state which is the continuation of the second stage of the natural state¹ when men wisely began to develop their faculties of reasoning,² a social state existing not necessarily as it does but as it could exist, a social state, in short, which is voluntary and equitable as described in the Contrat social.

Rousseau clarified what he meant by the relationship of the iniquitous social state that emerged from the natural state of man and the equitable social state he hoped might exist when he wrote:

Mais quoiqu'il n'y ait point de société naturelle et générale entre les (hommes), quoiqu'ils deviennent méchants et malheureux en devenant sociables, quoique les lois de la justice et de l'égalité ne soient rien pour ceux qui vivent à la fois dans l'indépendance de l'Etat social, loin de penser qu'il n'y ait plus ni vertu ni bonheur pour nous et que le ciel nous ait abandonnés sans ressource à la dépravation de l'espèce; efforçons nous de tirer du mal

1. Derathé, op. cit., p. 112.

2. Burgelin points out that since in Rousseau's concept reason is natural to man, and man is naturally good, "la raison est ... la dernière étape d'un développement qui est naturel, donc bon." (Pierre Burgelin, "Hors des ténèbres de la nature," Annales de Philosophie Politique: Rousseau et la Philosophie Politique [Paris: Presses Universitaires de France, 1965], p. 33.)

même le remede qui doit le guerir; par de nouvelles associations reparons le vice interne de l'association generale.¹

His concept of these "nouvelles associations" is part of the present comparative study.

The Social State

Burlamaqui's writing are replete with praise of the social state. As a respected member of the upper class society of the city of Geneva, his appraisal of society is only favorable, "car tel est le charme de ces affections sociales, que de-là naissent nos plaisirs les plus purs."² His attitude is also typical of classical French thought of the seventeenth century.³ The following might have been written by a seventeenth-century honnête homme: "Rien en effet de si satisfaisant ni de si flatteur que de penser que l'on mérite l'estime et l'amitié d'autrui."⁴ It might also have been written by an eighteenth-century philosophe.⁵

1. (FP) Oeuvres complètes, III, p. 479.

2. Droit naturel, p. 190.

3. La Rochefoucauld, for example, in the seventeenth century wrote: "Il serait inutile de dire combien la société est nécessaire aux hommes." (La Rochefoucauld, Maximes [Paris: Editions Garnier Frères, 1967], p. 185.)

4. Burlamaqui, Droit naturel, p. 190.

5. One of the major criticisms of the philosophes against Rousseau was what they called his anti-social behavior. Diderot, Grimm and Voltaire never ceased to berate him for the critical stand he took against the society they represented. Typical of Voltaire's criticism of Rousseau

Those feelings of natural pity which Rousseau observes in the natural man, Burlamaqui believes to be a part of man's social instinct, not absent in society at all:

Il suffit qu'un homme paroisse ému, pour nous émouvoir et nous attendrir comme lui. Si quelcun nous aborde avec la joye peinte sur le visage, il excite en nous un sentiment de joye. Les larmes d'un inconnu nous touchent, avant même que nous en sachions la cause; et les cris d'un homme qui ne tient à nous que par l'humanité, nous font courir à son secours, par un mouvement machinal qui précède toute délibération.¹

These sentiments are typical of eighteenth-century sensibilité, of writers like Diderot.

The Creator, says Burlamaqui, "auroit sans contredit pu créer chacun de nous avec une suffisance de bonheur et de perfection, pour vivre seul et séparé de tous les autres hommes; mais il ne l'a pas voulu."² It is for this reason that Burlamaqui never separates his hypothetical natural man too far from the modern man of society. Man is a social being because God gave him "une constitution, des facultez et des talens qui le rendirent très propre à cet état."³ Those who voluntarily retire from society to a solitary

is a letter the former wrote to Jean Le Rond d'Alembert wherein he referred to Rousseau as a "sauvage" and his manner of thinking as "sagesse iroquoise." (Theodore Besterman, ed., Voltaire's Correspondance [Genève: Institut et Musée Voltaire, 1958], XXX, p. 82.)

1. Droit naturel, pp. 188-189.
2. Elémens, p. 72.
3. Burlamaqui, Droit naturel, p. 188.

state, do so as the result of "la superstition, ou ... la mélancholie, ou ... un esprit de singularité."¹

It has been indicated that Rousseau believes or proposes the theory that the natural man was a strong, solitary creature able to compete with animals for his existence, that he had no need to associate with those of his same species except for the act of procreation. However, once man became a social being, Rousseau agrees with Burlamaqui that this now social being could not live in isolation: "L'homme isolé est un être si foible, ou du moins dont la force est tellement mesurée à ses besoins naturels et à son état primitif que pour peu que cet état change et que ces besoins augmentent il ne peut plus se passer de ses semblables."² Burlamaqui states, on the other hand, that man never could, even in the natural state, do without the assistance of his fellow man: "Telle est en effet la nature et la constitution de l'homme, que hors de la Société, il ne sauroit ni conserver sa vie, ni développer et perfectionner ses facultez et ses talens, ni se procurer un vrai et solide bonheur."³

Their views on the origin of civil society are similar. Burlamaqui says that the first societies of men

1. Ibid.

2. (FP) Oeuvres complètes, III, p. 479.

3. Droit naturel, p. 186.

were comprised of families which united to defend themselves. Rousseau agrees that men first united in society for common protection: "Cherchez les motifs qui ont porté les hommes unis par leurs besoins mutuels dans la grande société, à s'unir plus étroitement par des sociétés civiles; vous n'en trouverez point d'autre que celui d'assurer les biens, la vie, et la liberté de chaque membre par la protection de tous."¹ These unions for common defense were in turn the result of usurpation of power. Burlamaqui expresses the same idea:

Ce fut l'ambition soutenuë de la force ou de l'habileté qui assujettit pour la première fois plusieurs Peres de famille sous la domination d'un Chef. ... Un tel Corps Politique une fois formé plusieurs se joignirent ensuite par divers motifs, et d'autres Peres de famille craignans d'être insulté ou opprimés par ces Etats naissants, se déterminèrent à en former de pareils et à se donner un Chef.²

Unlike Burlamaqui whose views on society are completely consistent, Rousseau's feelings toward society are ambivalent. On the one hand he declares like Burlamaqui that society is good: "Partout où il y a des hommes, je suis chez mes frères."³ He proclaims that by nature he is "le plus sociable et le plus aimant des humains,"⁴ and explains that he is forced to flee the companionship of his

1. (DEP) Oeuvres complètes, III, p. 248.

2. Droit politique, p. 8.

3. Emile, p. 604.

4. Rêveries, p. 3.

fellow men because of their animosity toward him: "Pour ne les pas haïr il a bien fallu les fuir."¹ It is for this reason he spends so much time alone in natural surroundings: "Il [Rousseau] ne se réduisit à converser avec les plantes qu'après de vains efforts pour converser avec des hommes."² Once accustomed to the pleasures of nature he prefers solitude to being among those who hate him, although he still years for human companionship: "Faut-il s'étonner si j'aime la solitude? Je ne vois qu'animosité sur les visages des hommes, et la nature me rit toujours. Je sens pourtant encore, il faut l'avouer, du plaisir à vivre au milieu des hommes tant que mon visage leur est inconnu."³

Nevertheless, Rousseau has a genuine love of nature and solitude that is not entirely derived from the necessity of flight from his enemies, and admits that he is a naturally independent person:

Je n'ai jamais été vraiment propre à la société civile où tout est gêne, obligation, devoir.
... Mon naturel indépendant me rendit toujours incapable des assujettissements nécessaires à qui veut vivre avec les hommes. Tant que j'agis librement je suis bon et je ne fais que du bien; mais sitôt que je sens le joug, soit de la nécessité soit des hommes, je deviens rebelle ou plutôt rétif, alors je suis nul.⁴

1. Ibid., p. 9.

2. Rousseau Juge de Jean-Jacques, p. 138.

3. Rêveries, pp. 131-132.

4. Ibid., p. 86.

To Diderot's charge that only the wicked live alone, Rousseau replies: "Les méchants ne sont point dans les deserts, ils sont dans le monde. ... Eh Plut à Dieu que le méchant fut toujours seul! Il ne se feroit guères de mal."¹

In the Discours sur les Sciences et les Arts Rousseau maintains a thesis contrary to Burlamaqui's sustained praise of society. He condemns the artificiality that is engendered by "ce troupeau qu'on appelle société."² He points out that if the cultivation of the arts and sciences "est nuisible aux qualités guerrières, elle l'est encore plus aux qualités morales."³ Such cultural pursuits should be left to those who are fit for such studies: "S'il faut permettre à quelques hommes de se livrer à l'étude des Sciences et des Arts, ce n'est qu'à ceux qui se sentiront la force de marcher seuls sur leurs traces, et de les devancer: C'est à ce petit nombre qu'il appartient d'élever des monuments à la gloire de l'esprit humain."⁴ Thus his denunciation of the sciences and the arts is limited.⁵

1. Rousseau Juge de Jean-Jacques, pp. 132-133.

2. (DS) Oeuvres complètes, III, p. 8.

3. Ibid., p. 24.

4. Ibid., p. 29.

5. He defended his ideas on the arts and sciences against those who implied his condemnation was total by saying: "On s'est obstiné à l'accuser de vouloir détruire les sciences, les Arts, les theatres, les Academies et replonger l'univers dans sa première barbarie, et il a toujours insisté au contraire sur la conservation des

As in his condemnation of society, he only criticizes those aspects of the arts and sciences which are pernicious to mankind; namely, those things which corrupt morals, which soften and weaken men.

Despite his criticism, Rousseau never rejects society, or advocates a return to the state of nature, because he knows that man, like Adam driven from the Garden of Eden,¹ once having left that state could not return: "La nature humaine ne retrograde pas et jamais on ne remonte vers les tems d'innocence et d'égalité quand une fois on s'en est éloigné."² Man might have been happier in this state than in the social state, but he would also have lost much that can be attained in society: "Né dans le fond d'un bois, il eût vécu plus heureux et plus libre; mais n'ayant rien à combattre pour suivre ses penchants, il eût été bon sans mérite, il n'eût point été vertueux."³

institutions existantes, soutenant que leur destruction ne feroit qu'ôter les palliatifs en laissant les vices et substituer le brigandage à la corruption." (Rousseau Juge de Jean-Jacques, pp. 275-276.)

1. Martin carries the analogy of the Fall with Rousseau's thought one step further to include the idea of redemption as well: "Man, once innocent in the Garden, had been corrupted by the Fruit of the Tree of Knowledge. . . . Rousseau wrote The Social Contract to explain the social means of grace, by which civilized man could be saved." (Kingsley Martin, French Liberal Thought in the Eighteenth Century, 2nd. ed. [London: Turnstile Press Ltd., 1954], p. 212.)

2. Rousseau Juge de Jean-Jacques, pp. 275-276.

3. Rousseau, (EASP) Oeuvres complètes, III, p. 605.

Rousseau's criticism of society is directed against its abuses. Thus, although he criticizes the evil in society, he can, like Burlamaqui, affirm that "l'homme est sociable par sa nature, ou du moins fait pour le devenir."¹ Instead of preferring the primitive state of nature to the social state, Rousseau says that man "devroît bénir sans cesse l'instant heureux qui l'en arracha [from the state of nature] pour jamais, et qui, d'un animal stupide et borné, fit un être intelligent et un homme."² He agrees with Burlamaqui that the civil society was instituted for man's benefit by God, that it was dictated "par une inspiration céleste, qui apprit à l'homme à imiter ici-bas les décrets immuables de la divinité."³ The social state is preferable to the natural state because it ensures man the exercise of his natural rights against violation of these rights by others, because it reestablishes "le droit d'égalité naturelle entre les hommes. ... Nul ne perd de sa liberté que ce qui peut nuire à celle d'un autre."⁴

In conclusion it can be said that Rousseau's and Burlamaqui's ideas on the social state are quite similar:

1. Emile, p. 354. Derathé comments: "Sortant des mains de la nature, l'homme n'est sociable qu'"en puissance," il est seulement "fait pour le devenir" et ne le deviendra effectivement qu'après avoir vécu en société." (Op. cit., pp. 148-149.)

2. (CS) Oeuvres complètes, III, p. 364.

3. (DEP) Oeuvres complètes, III, p. 248.

4. Ibid.

both agree that man was destined to be a social being, that his Creator made him that way, that the civil society arose from common defense and the usurpation of power by the strongest and most ambitious, and that man derives great benefits from his associations with his fellow man. The main difference in their thoughts on the social state is that one does not find the sustained tirade against the evils of society in the works of Burlamaqui that one finds in Rousseau's works. Burlamaqui maintains a consistent praise for society throughout his books. Rousseau lacks this consistency and thereby weakens his position that society is, or can be, beneficial to man, for although he defends his criticism of society as being directed against its abuses, because of the violence of his attack, it is sometimes hard to distinguish the criticism of abuses from criticism of society itself. On the other hand, though lacking Burlamaqui's consistency, Rousseau gives a more realistic picture of society. Burlamaqui's optimistic picture of the harmony of the civil society is not as veridical as Rousseau's. Rousseau knew and felt the injustice and corruption of the civil societies and governments of his day; his depiction of these evils is factual. The Professor of Geneva, friend of the arts and sciences, respected member of a cultured society, gives his reader little indication of the existing abuses of eighteenth-century society.

The Family

Both Rousseau and Burlamaqui considered the family to be the oldest and first of the societies of men. Rousseau stated: "La plus ancienne de toutes les sociétés et la seule naturelle est celle de la famille."¹ Burlamaqui expressed the same idea in almost the same words: "Cette Société [the family] est la plus naturelle et la plus ancienne de toutes."² Besides being the first and most natural of societies, the family is also the foundation of or model for the civil society: "Elle sert de fondement à la Société Nationale; car un Peuple ou une Nation n'est qu'on composé de plusieurs Familles."³ Rousseau agreed: "La famille est donc si l'on veut le premier modèle des sociétés politiques."⁴

Paternal Authority. According to Rousseau, "par plusieurs raisons tirées de la nature de la chose, le pere doit commander dans la famille."⁵ This right of command derives principally from superiority of physical force: "Le pere étant physiquement plus fort que ses enfans, aussi longtemps que son secours leur est nécessaire, le pouvoir paternel

1. (CS) Oeuvres complètes, III, p. 352.

2. Droit naturel, p. 45.

3. Ibid.

4. Loc. cit.

5. (DEP) Oeuvres complètes, p. 242.

passee avec raison pour être établi par la nature."¹ The authority of the father and mother is not equal. Consistent with his concept of sovereignty (that there cannot be a division of the right to command), Rousseau maintained that the father alone has the right to command. He also has the right to inspect his wife's conduct to ensure that her children are sired by him and not by someone else.

Burlamaqui also affirmed that the father has a natural right to command within the family. Like Rousseau, he concluded that this authority was based upon the physical dependence of children on their parents during infancy which makes them "naturellement assujettis à leurs parents; et ... la nature donne à ceux-ci toute l'autorité et tout le pouvoir nécessaire, pour gouverner ceux dont ils doivent procurer l'avantage."²

Although Burlamaqui believed like Rousseau that the wife was subject to the authority of the husband, he affirmed, however, that in regard to their children, "la mère a un droit égal à celui du père sur les enfans qui naissent de leur mariage; de sorte que, pour parler exactement, il faudroit appeler cette autorité le pouvoir des parens, et non pas le pouvoir paternel."³ Consistent with this notion,

1. Ibid., p. 241.

2. Droit naturel, p. 46.

3. Elémens, p. 210.

Burlamaqui usually refers to the obedience of children to their parents, rather than to the father alone. Rousseau, on the other hand, usually uses the term paternal authority in a similar context.

There is another important area of agreement on paternal authority by Rousseau and Burlamaqui that make them both disagree with a commonly accepted political concept, an extension of the concept of paternal authority. Bossuet, for example, extended the principle of the natural authority fathers have over their children to support the principle of monarchical right to rule: "De là nous pouvons juger que la première idée de commandement et d'autorité humaine, est venue aux hommes de l'autorité paternelle."¹ According to the natural order of things, the authority to rule is derived from a higher source than the people or the consent of those governed. The king, asserted Bossuet, stands as the father of his kingdom, invested by God, as is the father in regard to his family, with the right to rule his people.

Subscribing to a current of thought opposed to the political extension of paternal authority,² Rousseau

1. Bossuet, Oeuvres complètes, ed. F. Lachat (Paris: Librairie de Luis Vives, Editeur, 1864), XXIII, p. 518.

2. Locke was part of this current of thought. (Hazard, La Crise de la Conscience Européenne, II, p. 64.) Diderot was also; he wrote: "Aucun homme n'a reçu de la nature le droit de commander aux autres. ... Si la nature a établi quelque autorité, c'est la puissance

asserted that when children become adults they are no longer subject to parental authority: "S'ils continuent de rester unis ce n'est plus naturellement c'est volontairement, et la famille elle-même ne se maintient que par convention."¹

From this principle he concluded that all legitimate authority in society must derive from convention. In the same way that the father has authority over his children only by their consent once they are mature, the sovereign has a right to command only as his subjects accord him this right.

Burlamaqui supported the same principle: "Le pouvoir paternel, proprement ainsi nommé, finit dès qu'un enfant est parvenu à un âge parfait de raison et de maturité, et qu'il peut se conduire par lui-même."² He viewed the loss of parental authority as a gradual diminishing process corresponding to the increasing ability of the child to reason and take care of itself. Like Rousseau, he concluded that political authority among men must be founded on convention, not on an extension of the concept of parental authority.

Nevertheless, Burlamaqui stated that although children are no longer under parental authority once they have

paternelle; mais la puissance paternelle a ses bornes, et dans l'état de nature elle finirait aussitôt que les enfants seraient en état de se conduire." (Denis Diderot, Oeuvres politiques, ed. Paul Vernière [Paris: Editions Garnier Frères, 1963], p. 9.)

1. (CS) Oeuvres complètes, III, p. 352.

2. Elémens, p. 216.

attained the age of reason, they still owe to their parents "des sentiments d'affections, de respect et de reconnoissance."¹ Rousseau agreed when he said that children should render obedience to their parents "d'abord par nécessité, ensuite par reconnoissance."² Burlamaqui extended this debt of gratitude to include consent in marriage: "Il est donc du devoir d'un enfant de ne se marier qu'avec l'approbation de ses parens."³ He added that this is especially important if the child marrying demands a part of his father's inheritance.

By the same token, he asserted that parents have a duty to "prendre soin de leurs enfans, de les nourrir, et de leur donner une éducation convenable,"⁴ although he conceded that "la nature permet encore à un père qui manque des moyens nécessaires pour subsister et entretenir ses enfans, de les mettre pour ainsi dire en gage, et de les vendre même; car il vaut mieux les exposer à un esclavage supportable, que de les laisser mourir de faim."⁵ It is

1. Ibid., p. 215.

2. (DEP) Oeuvres complètes, III, p. 243.

3. Elémens, p. 215.

4. Ibid., p. 207.

5. Ibid. Gagnebin remarks that Burlamaqui's advocating the acceptability of a man being able to sell his children, "lui a été vivement reproché." (Op. cit., p. 211.) De Félice, on the other hand, is in perfect agreement with Burlamaqui. Regarding the permissibility of the father's

interesting to note that whereas Rousseau opposed the selling of children into slavery, in his own life, he relinquished his parental responsibility in much the same way and according to the conditions Burlamaqui said was permissible. In a letter to Mme Berthier, Rousseau excused the abandoning of his five children to a home for orphans because, he said: "J'aime mieux qu'ils vivent dans un état obscur sans me connoître, que de les voir ... bassement nourris par la traitresse générosité de mes ennemis."¹

Marriage. During a time when the marriage vow was not always respected,² Rousseau upheld the sanctity of marriage: "Rousseau tient le mariage pour un noeud très saint.

... Le crime suprême des philosophes consiste à ruiner cette institution."³ The Vicaire Savoyard said: "Dès ma jeunesse j'ai respecté le mariage comme la première et la

selling his child, he remarks: "En effet, la nature donne plein droit à tout ce qui est absolument nécessaire, pour obtenir une fin, qu'elle prescrit." (Burlamaqui, Droit de la nature et des gens, III, p. 450.)

1. Correspondance générale, XIX, p. 214.

2. One critic remarked: "Le tableau tracé par Taine n'est que trop vrai du monde où Rousseau fréquentait; ... le mari et la femme vivant à part, dans le même hôtel, sans rien de commun; ... l'amour conjugal tenu pour ridicule, réservé aux bourgeois; l'adultère, sous des formes décentes, passé à l'état de règle." (Brou, op. cit., p. 114.)

3. Pierre Burgelin, La Philosophie de l'Existence de J.-J. Rousseau (Paris: Presses Universitaires de France, 1952), p. 404.

plus sainte institution de la nature."¹ In La Nouvelle Héloïse the author wrote: "L'homme et la femme sont destinés l'un pour l'autre, la fin de la nature est qu'ils soient unis par le mariage."² For this reason he condemned celibacy as being contrary to nature.³

Burlamaqui also insisted upon the importance and necessity of marriage: "Les Familles commencent par le mariage; et c'est la Nature elle-même qui invite les hommes à cette union."⁴ He acknowledged it was the purpose of God that the human species be preserved through propagation; therefore, those who could marry should do so. Nevertheless, he did not conclude that every man is obligated to marry or that a man was amiss in his duty by not marrying: "Le célibat n'a donc rien en lui-même d'illégitime, pourvu que ceux qui vivent dans cet état n'en prennent pas occasion de vivre dans le libertinage et dans la débauche."⁵

Like Rousseau he thought that "la bonne politique veut donc que les souverains fassent tout ce qui dépend d'eux pour encourager les mariages."⁶ Rousseau stated: "Il

1. Rousseau, Emile, p. 321.

2. Jean-Jacques Rousseau, La Nouvelle Héloïse, ed. Daniel Mornet (Paris: Librairie Hachette, 1925), III, p. 206.

3. La Nouvelle Héloïse, IV, p. 224.

4. Droit naturel, p. 45.

5. Elémens, p. 199.

6. Ibid., p. 200.

faut que la bonté du gouvernement porte les citoyens à se marier."¹ In the Constitution pour la Corse he advocated the encouragement of marriage by having citizenship dependent upon a young man's taking a wife. The young aspirant would become a full citizen after marriage and the birth of two children. After the age of forty, every Corsican who was not married would be excluded from citizenship for life. Burlamaqui believed that "un marié ... est beaucoup meilleur citoyen, et beaucoup plus attaché au bien public que ceux qui demeurent dans ..." ²

Despite the fact that marriage was the intention of God in relation to men, Burlamaqui nevertheless affirmed marriage as a civil affair. As a Protestant, he criticized the Church's practice of not recognizing its own ceremony but its own, maintaining that marriage was a civil institution not limited to any religious group.

The only other condition Burlamaqui attached to marriage was that it be contracted with the consent of the parties involved (even though he thought these parties should have the consent of their parents), which of course necessitated their having the power of reasoning so that "ce consentement soit exempt d'erreur, de surprise et de

1. Emile, p. 599.

2. Elémens, p. 199.

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1. Emile, p. 599.

2. Elémens, p. 199.

violence;"¹ the contracting parties also had to be of the age of puberty, and finally the wife had to promise entire fidelity to her husband in order that the latter might have "des enfans qui soient à lui et non des enfans supposés ou bâtards."²

Burlamaqui condemned polygamy involving a wife having more than one husband; however, in regard to a man having more than one wife, he conceded that that kind of conjugal relationship did not have "tous les inconvéniens de la première, et ... même il ne paroît pas, à parler à la rigueur, que ce soit une chose absolument mauvaise de sa nature, ni que l'on puisse prouver qu'elle soit absolument contraire au droit naturel."³ Nevertheless, he considered monogamous marriage to be best for the husband, wife and children.

Due to his belief in the sanctity of marriage, Burlamaqui condemned divorce except under certain conditions, such as desertion by the husband or wife, impotency, or adultery: "Il est tout-à-fait de l'intérêt de la société que l'on mette des bornes étroites à la liberté du divorce, et qu'on ne le permette que pour un petit nombre de cas et pour des causes considérables."⁴

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1. Ibid., p. 200.
 2. Ibid., p. 201.
 3. Ibid., pp. 202-203.
 4. Ibid., p. 205.

He considered sexual instinct to be natural, without any connotation of evil: "Quels que puissent être quelquefois les effets de ce penchant naturel de l'homme à l'amour et au plaisir, il ne faut pourtant pas l'envisager comme une imperfection ou un vice de la nature humaine."¹ For this reason he rejected the idea that because of Adam's sin sexual relations were evil. In fact, he confided to Lord Kilmorey in regard to man's sexual drive: "Je commence à soupçonner que c'est un des plus précieux avantages qu'il ait reçus de la nature."² He reasoned that it was necessary that the Creator make the sexual drive within man powerful enough to preserve the human race, because without such urging men could not be induced to engender children. However, because this instinct is so potent, he added: "Plus les aiguillons de l'amour sont vifs, et plus la raison doit aller au devant des désordres qu'ils pourraient causer."³

Marriage implies duties to the partners entering into the contract, Burlamaqui stated when he defined marriage as "la société d'un homme et d'une femme que s'engagent à

1. Droit de la nature et des gens, V, p. 348.

2. Ibid., p. 350. He also stated: "J'ose même dire, mylord, que cette disposition naturelle de l'homme au plaisir, à la considérer en général, donne à l'âme un caractère, et pour ainsi dire, une trempe de douceur et d'humanité." (Ibid., p. 365.)

3. Ibid., p. 352.

s'aimer, à se secourir, et qui se promettent réciproquement leurs faveurs dans la vue d'avoir des enfans, et de les elever d'une manière convenable à la nature de l'homme, à l'avantage de la famille et au bien de la société."¹

Though he emphasized the importance of duty, he did not forget the role that love and affection play in marriage:

Plus on est près l'un de l'autre, plus on est à portée de connoître les défauts de son compagnon. ... Mais quel est, je vous prie, le dépit assez violent, ou quelle est l'aigreur assez envenimée qui puisse tenir contre les empressemens et les caresses d'un époux, ou contre les regards enchanteurs d'une épouse, qui laisse dire à ses yeux et à son air ce que la modestie ne lui permet pas de demander à haute voix; c'est ainsi que le lit nuptial est le tombeau des querelles domestiques.²

Rousseau agreed that love is important in marriage. He said of the love and affection emanating from family relationships: "Les sentimens que nous acquérons ou que nous renforçons dans ce commerce intime sont les plus vrais, les plus durables, les plus solides, qui puissent nous attacher aux êtres périssables."³ Like Burlamaqui, he saw no inherent evil in sexual instinct. Emile's preceptor said of the sexual relationship between husband and wife: "L'auteur de la nature donne à cet acte celle ["l'idée"] de l'attachement exclusif qui le rend délicieux, celle ["l'idée"] des devoirs de fidélité, de pudeur, qui l'environnent, et qui

1. Elémens, pp. 196-197.

2. Ibid., p. 360.

3. Correspondance générale, XIX, p. 212.

redoublent son charme en remplissant son objet."¹ The preceptor condemned infidelity between husband and wife, and, before marriage, encouraged Emile to be chaste; he showed "comment au goût de la chasteté tiennent la santé, la force, le courage, les vertus, l'amour même, et tous les vrais biens de l'homme."²

Rousseau condemned polygamy: "C'est de la pluralité des femmes que vient la tyrannique précaution des maris, et que le sentiment de sa propre faiblesse porte l'homme à recourir à la contrainte pour éluder les loix de la nature."³ He thus disagreed with Burlamaqui who said that a man's having more than one wife was not against the natural law.

In regard to the requirements for marriage, Rousseau agreed with Burlamaqui that the major requirement was "qu'il faut marier les jeunes gens à l'âge nubile."⁴ He agreed that the consent of the young people being married is necessary: "Au lieu donc de destiner dès l'enfance une épouse à mon Emile, j'ai attendu de connaître celle qui lui convient."⁵ Compatibility is also a major prerequisite:

N'unissez pas des gens qui ne se conviennent que dans une condition donnée, et qui ne se conviendront

1. Emile, p. 403.

2. Ibid.

3. Ibid., p. 548.

4. Ibid., p. 393.

5. Ibid., p. 515.

plus, cette condition venant à changer, mais des gens qui se conviendront dans quelque situation qu'ils se trouvent, dans quelque pays qu'ils habitent, dans quelque rang qu'ils puissent tomber.¹

It can be concluded that Rousseau's and Burlamaqui's sentiments on marriage and the family are similar. They derive generally from Christian ethics, and more specifically from the Protestant Christian ethics typical of their Swiss homeland.

Man's Relationship to God

Burlamaqui's and Rousseau's ideas on God and man's relationship to the Creator are an important part of their moral thought. God, the source of natural law, is an integral part of Burlamaqui's system of natural law. Rousseau's writings contain numerous references to Deity.

The Nature of God

Burlamaqui defines God as a "premier Etre intelligent, existant par lui-même, de qui toutes choses dépendent comme leur première cause, et qui ne dépend lui-même d'aucune."² He is a Being endowed with reason and intelligence, "un Etre essentiellement Bon; perfection qui semble découler naturellement de sa Sagesse et de sa Puissance."³

1. Ibid.

2. Droit naturel, p. 143.

3. Ibid., p. 152.

Because he is the Creator of men, the latter are absolutely dependent on him and are subject to his sovereign empire over them.

Rousseau agreed that God is an independent being: "La puissance divine agit par elle-même."¹ He also agreed that "Dieu est bon; rien n'est plus manifeste."² The goodness of God (which Rousseau defined as "l'amour de l'ordre"³) "is an inevitable consequence of God's Omnipotence,"⁴ because "la bonté est l'effet nécessaire d'une puissance sans borne. ... Donc l'Etre souverainement bon parce qu'il est souverainement puissant, doit être aussi souverainement juste."⁵

Rousseau believed that God is intelligent, but unlike Burlamaqui who associates God's intelligence with reason, he stated that God's intelligence is purely intuitive. He disagreed that God is a being who reasons because "la suprême Intelligence n'a pas besoin de raisonner; il n'y a pour elle ni prémisses ni conséquence."⁶

1. Emile, p. 347.

2. Ibid.

3. Ibid., p. 345.

4. Ronald Grimsley, Rousseau and the Religious Quest (Oxford: Clarendon Press, 1968), p. 56.

5. Rousseau, Emile, p. 342.

6. Ibid., p. 347.

Burlamaqui proposed that God's purpose in regard to his creations was to procure his own glory and "la perfection et le bonheur de ses créatures, autant que leur nature ou leur constitution les en rend capables."¹ Rousseau implied that not only does man have duties to God, but that the Creator had certain duties to his creatures: "Dieu dit-on ne doit rien à ses creatures. Je crois qu'il leur doit tout ce qu'il leur promet en leur donnant l'être."²

In order to procure man's happiness and perfection, both writers maintained that God created a favorable environment for man to live in. According to Burlamaqui, God created the world and the things of nature for man's utility and pleasure. Those foods which God made to nourish man are pleasing to the latter's taste; when he eats something that is not good for him, or if he eats in excess, he has a feeling of displeasure: "Tout ce qui nous environne devient pour nous une source d'agréments, dès que nous savons en jouir avec discretion."³ In his optimistic picture of God's creation, he sees a world with its "brillante décoration du Ciel et de la Terre ... qui nous offre mille et mille Tableaux, toujours agréables, toujours variés."⁴

1. Droit naturel, pp. 156-157.

2. Emile, p. 343.

3. Droit naturel, p. 153.

4. Ibid.

Rousseau, like Burlamaqui and other optimistic eighteenth-century philosophers, also believed that God had created nature beautiful for man's utility and pleasure. "Les plantes semblent avoir été semées avec profusion sur la terre, comme les étoiles dans le ciel, pour inviter l'homme par l'attrait du plaisir et de la curiosité à l'étude de la nature."¹

Beyond these basic premises relating to the nature of God and his purposes in relation to man, both men admitted that while believing firmly in his existence, they knew little else about God. Burlamaqui stated that because of his limited intelligence, man cannot form "une idée parfaite de la Divinité."² Rousseau summarized his knowledge of God by saying:

Cet être qui veut et qui peut, ... qui meut l'univers et ordonne toutes choses, je l'appelle Dieu. Je joins à ce nom les idées d'intelligence, de puissance, de volonté, que j'ai rassemblées, et celle de bonté qui en est une suite nécessaire; mais je n'en connais pas mieux l'être auquel je l'ai donné; il se dérobe également à mes sens et à mon entendement, plus j'y pense, plus je me confonds; je sais très certainement qu'il existe, et qu'il existe par lui-même.³

1. Rêveries, p. 98. Bernardin de Saint-Pierre, called by Nitze and Dargan the "immediate disciple of Rousseau," often carried the concept of the goodness of nature to extremes: "For instance, cantaloupes are divided by kindly nature into sections for family eating." (William A. Nitze and E. Preston Dargan, A History of French Literature from the Earliest Times to the Present [New York: Henry Holt and Company, 1928], p. 494.)

2. Elémens, p. 35.

3. Emile, p. 335.

Admitting that man's knowledge of God is imperfect, both nevertheless maintained that there is ample evidence to prove God's existence, and attempted a vigorous defense of his existence against the atheism of their day.

Proofs of God's Existence

Burlamaqui proposed as a proof of the existence of God "la contemplation de ce monde visible, où nous voyons un mouvement et un ordre que la matière n'a point par elle-même et qu'elle ne s'est pas donné."¹ The beauty and order of the universe testify clearly to the supreme wisdom and intelligence that created it. The evidence of God's existence is so apparent, that all should be able to recognize it: "Les preuves que la raison nous donne sont si convaincantes, que l'homme le plus stupide ne sauroit refuser son assentiment à cette vérité, et que l'athéisme mérite d'être regardé comme la plus grande extravagance de l'esprit humain."² He had nothing but scorn for those who proposed the universe was created by chance: "Quoi qu'il se soit trouvé des Philosophes qui ont attribué tout cela au Hazard, c'est une pensée si ridicule, que je ne sai s'il est jamais entré une plus grande chimère dans l'esprit humain."³

1. Droit naturel, p. 146.

2. Elémens, p. 33.

3. Droit naturel, pp. 148-149.

Rousseau also affirmed that God manifests himself in his works, and that the evidence of the Creator is so apparent in nature that "il faut, quand on a les yeux ouverts, les fermer pour ne l'y pas voir."¹ The Vicaire Savoyard proposed as his first article of faith, belief in the existence of God based on the observation that there is movement in the universe: "Les corps inanimés n'agissent que par le mouvement, et il n'y a point de véritable action sans volonté."² His second article of faith states that this movement induced by will shows the existence of an intelligent Being: "The source of movement is ultimate and absolute, an all-powerful will which may be called 'God' or the 'Supreme Being.'"³ Like Burlamaqui he asserted that the order of the universe proved the existence of God: "A quels yeux non prévenus l'ordre sensible de l'univers n'annonce-t-il pas une suprême intelligence? ... Il m'est impossible de concevoir un système d'êtres si constamment ordonnés, que je ne conçoive une intelligence qui l'ordonne."⁴

He agreed that the idea of a chance creation was absurd: "Qu'on me parle tant qu'on voudra de combinaisons et de chances. ... Si l'on venait me dire que des caractères d'imprimerie projetés au hasard ont donné l'Enéide tout

1. Contrat social, p. 458.

2. Emile, p. 330.

3. Grimsley, op. cit., 55.

4. Emile, pp. 333-334.

arrangée, je ne daignerais pas faire un pas pour aller vérifier le mensonge."¹ He refused to believe that inert matter could produce living, sentient beings, or that the existence of intelligent beings was the result of blind fate.

The Immortality of the Soul

Burlamaqui advanced three basic proofs of the immortality of the soul. His first proof is based on the Cartesian principle that the soul is distinct from the body and is the motivating force within it. The soul, he said, is "une pure Intelligence, qui participe en quelque sorte à la nature de l'Intelligence Suprême."² Thus when the body dies, the soul lives on, an immortal entity like God.

His second proof is based on what he conceives to be the excellence of the soul: "Il n'est point probable qu'une Intelligence, qui est capable de connoître tant de véritez, ... un Etre orné de qualitez si excellentes et supérieures à celles des animaux brutes, n'ait été fait que pour le court espace de cette vie."³

1. Ibid., p. 333.

2. Droit naturel, p. 318.

3. Ibid., p. 321.

The third proof derives from man's natural inclination to think of a next life and the continuation of his being: "Nous portons naturellement nos vues sur l'avenir. ... Nous cherchons à perpétuer notre nom et notre mémoire. ... Tout cela semble nous indiquer clairement que, par l'institution du Créateur, il y a comme une proportion et un rapport naturel de l'Ame à l'immortalité."¹

To prove the immortality of the soul, Rousseau also began with the Cartesian concept of the different nature of the body and the soul:

Quand l'union du corps et de l'âme est rompue, je conçois que l'un peut se dissoudre, et l'autre se conserver. Pourquoi la destruction de l'un entraînerait-elle la destruction de l'autre? Au contraire, étant de natures si différentes, ils étaient, par leur union, dans un état violent; et quand cette union cesse, ils rentrent tous deux dans leur état naturel: la substance active et vivante regagne toute la force qu'elle employait à mouvoir la substance passive et morte.²

He also based his acceptance of the immortality of the soul on the fact that there is a lack of justice in this life. Since the Creator is perfect and just, there must be a next life where injustice will be punished by God and goodness not acknowledged in this life will be rewarded:

Quand je n'aurais d'autre preuve de l'immatérialité de l'âme que le triomphe du méchant et

1. Ibid., p. 324.

2. Emile, pp. 343-344.

l'oppression du juste en ce monde, cela seul m'empêcherait d'en douter. Une si choquante dissonance dans l'harmonie universelle me ferait chercher à la résoudre. Je me dirais: Tout ne finit pas pour nous avec la vie, tout rentre dans l'ordre à la mort.¹

During his first meeting with the philosophes in Paris, Rousseau indicated that their atheistic arguments had not persuaded him, although they had disturbed him. He could not give them a logical explanation for the existence of God and the immortality of the soul, but he thought that there must be an answer: "Je m'accusais moins d'erreur que d'inéptie, et mon coeur leur répondait mieux que ma raison."²

Much of his belief that there is a next life, that the soul lives on after the death of the body, is based upon hope--hope that there is a better life after this one:

Non, j'ai trop souffert en cette vie pour n'en pas attendre une autre. Toutes les subtilités de la métaphysique ne me feront pas douter un moment de l'immortalité de l'âme, et d'une Providence bien-faisante. Je la sens, je la crois, je la veux, je l'espère, je la défendrai jusqu'à mon dernier soupir, et ce sera, de toutes les disputes que j'aurai soutenues, la seule où mon intérêt ne sera pas oublié.³

Rousseau's concept of the soul and its immortality is basically Christian. He rejected any pantheistic notion

1. Ibid., p. 343.

2. Rêveries, p. 31. One is reminded here of Pascal: "Le coeur a ses raisons que la raison ne connaît point; on le sait on mille choses." (Blaise Pascal, Oeuvres complètes [Paris: Editions Gallimard, 1954], p. 1221.

3. ["Lettre sur la Providence"] Fellows and Torrey, op. cit., p. 519.

of the soul being incorporated into the great soul of nature.¹ For him the existence of the soul in the next life means that the soul lives on as the same being or essence it constitutes in this life because reward or punishment of deeds done in this life entails their application to the same person in the next life. The existence of an immortal soul in Rousseau's mind is part of the Christian concept of the existence of God the Creator of all things including the immortal soul of man.

To unbelievers Burlamaqui proposed the same arguments that Pascal had proposed in his pari:

S'il y a un état à venir, non-seulement c'est une erreur de ne le pas croire, mais c'est un égarement funeste d'agir comme s'il n'y en avoit point; une telle erreur entraîne après soi des suites pernicieuses; au lieu que s'il n'y en a point, l'erreur de le croire ne produit en général que de bons effets.²

He offered the concept of reward and punishment in the next life for deeds done in this life as one of the sanctions of natural law. He pointed out that since the

1. "En marge d'un manuscrit, Rousseau note: 'On voit par là que ceux qui soutiennent, à l'exemple de Spinoza, qu'à la mort d'un homme son âme se résorbe dans la grande âme du monde ne disait rien qui ait du sens. Ils font un pur galimatias.'" (Burgelin, La Philosophie de l'Existence, p. 421.)

2. Gagnebin states that Burlamaqui put forth these arguments "en s'inspirant manifestement des Pensées de Pascal." (Op. cit., p. 121.) Pascal wrote: "Or, quel mal vous arrivera-t-il en prenant ce parti? Vous serez fidèle, honnête, humble, reconnaissant, bienfaisant, ami, sincère, véridique." (Op. cit., p. 1216.)

breaking of natural law in this life is not always punished, nor is the recompense for good done in this life always forthcoming, God has provided for "l'établissement des récompenses et des punitions dans un état à venir."¹ This principle not only provides an equitable distribution of justice in the next life, but serves as a powerful motive in this life for people to obey the laws of God and man. It is a utilitarian concept with civil as well as religious application.

Rousseau also stated that belief in rewards or punishment in a life hereafter aids governments to induce people to obey law: "Le dogme de l'ordre moral rétabli dans l'autre vie a fait jadis reparer bien des torts dans celle-ci, et les imposteurs ont eu dans les derniers momens de leurs complices un danger à courir qui souvent leur servit de frein."²

Natural Religion

Burlamaqui defined religion as "ce bien qui attache l'homme à Dieu et à l'observation de ses Loix, par les sentimens de respect, d'amour, de soumission et de crainte, qu'excitent dans notre esprit les perfections de l'Etre Suprême, et l'entière dépendance où nous sommes de lui, comme

1. Droit naturel, p. 329.

2. Rousseau Juge de Jean-Jacques, p. 308.

de notre Créateur tout sage et tout bon."¹ Natural religion, like natural law, is revealed by reason: "Nous supposons donc ici que l'homme peut, en faisant usage de sa raison et sans le secours d'une révélation particulière, parvenir à la connoissance de Dieu et des devoirs qui lui sont dus."²

The articles of faith of natural religion, he enumerated as follows: "Qu'il y a un Dieu; qu'il est le Créateur de l'univers; qu'il le gouverne et le conduit par une sage providence; qu'il n'y a qu'un seul Dieu; que ce Dieu est un Etre souverainement parfait."³ The dogmas of Rousseau's civil religion are largely the same as these tenets of Burlamaqui's natural religion. Rousseau adds the belief in a life to come, the happiness of the just, the punishment of the wicked, the sacredness of the social contract, and the banishment of intolerance.⁴

Rousseau stated that the first part of the "Profession de Foi du Vicaire Savoyard" was destined to combat materialism, to establish the existence of God and natural religion. The natural religion he preached in this article

1. Droit naturel, p. 182.

2. Elémens, pp. 31-32.

3. Ibid., p. 33.

4. (CS) Oeuvres complètes, p. 468. Derathé remarks concerning these tenets of Rousseau's civil religion: "Cette énumération comprend, en réalité, des dogmes religieux, ceux de la religion naturelle ou de la profession de foi du vicaire savoyard, et des dogmes purement civils." (Rousseau, Oeuvres complètes, p. 1505.)

is discernable to all men by the use of reason. The existence of God is manifest in the works of nature; his moral laws are revealed by reason and confirmed by conscience.

Rousseau used the concept of natural religion to combat the teachings of organized religion he believed to be false. To those theologians who proposed that religion is a mystery not discernable by reason, he replied: "Je croirai plutôt à la magie, que de reconnoître la voix de Dieu dans les leçons contre la raison."¹ He would not accept ecclesiastical authority for the basis of his religious belief. His attitude is typically Protestant: "Je prends l'Ecriture et la raison pour les uniques règles de ma croyance."² The best religion, he affirmed, is the clearest. Religion which is filled with mysteries and contradictions cannot be ordained of God: "Le Dieu que j'adore n'est point un Dieu de ténèbres, il ne m'a point doué d'un entendement pour m'en interdire l'usage: me dire de soumettre ma raison, c'est outrager son auteur."³

The Cristian Religion

Burlamaqui said that he wrote his book on natural law from the standpoint of a Christian philosopher. Concluding

1. Contrat social, p. 492.

2. Ibid., p. 466.

3. Emile, p. 368.

the work, he stated that nothing showed better that the principles of natural law he had developed were true than the fact that they were in accord with the principles of revealed religion. Even though he stated that his principles of natural law are discerned by reason alone, he cited within the work scriptures from the Bible to support these principles. Reason alone is sufficient to reveal the tenets of natural religion, but the revelations of the Bible establish the superiority of Christian religion. Burlamaqui always affirmed this superiority even though in his works he used reason alone to develop his principles, since they must be made known to all by reason. He concluded by saying: "Il est bien satisfaisant pour nous de voir que les principes que nous avons posés, sont précisément ceux que la Doctrine Chrétienne prend pour base, et surquoi elle élève tout l'édifice de la Religion et de la Morale."¹

Rousseau also professed to be a Christian, although many have contested this assertion. His belief in the doctrine of the Gospel is more complex than that of Burlamaqui who accepted most of the tenets of the Bible without question. Rousseau's opinions of certain Biblical principles is difficult to discern because he rejected some of the miraculous elements of the Gospel, and also because he defended his religious beliefs against both atheists and theologians

1. Droit naturel, p. 352.

which necessitated his emphasizing different religious arguments with each group.¹ In the "Profession de Foi du Vicaire Savoyard," for example, he used this procedure: the first part of the work defends the existence of God against atheists, whereas the second part is directed against theologians and their belief in the miraculous. Due to his arguments against the latter, some have concluded he is not a Christian at all, but a deist.²

Despite these contentions, despite his inability to accept parts of the scriptures, he could affirm with conviction: "Je suis Chrétien, et sincèrement Chrétien, selon la doctrine de l'Evangile. Je suis Chrétien, non comme un disciple des prêtres, mais comme un disciple de Jésus-Christ."³ Masson noted of the essence or spirit of his belief: "Cet élan est chrétien."⁴ He confirmed his acceptance of the

1. Albert Schinz, La Pensée de Jean-Jacques Rousseau (Paris: Librairie Félix Alcan, 1929), II, p. 457.

2. One of his Swiss contemporaries, Henri-David de Chaillet, referred to his religious belief as "déisme, légèrement teint de Christianisme." (Charly Guyot, La Vie intellectuelle et religieuse en Suisse française à la Fin du XVIII^e Siècle [Neuchâtel: Editions de la Braconnière, 1946], p. 247.) A modern critic affirms that Rousseau also rejects the divinity of Christ. (Jean Starobinski, Jean-Jacques Rousseau: La transparence et l'obstacle [Paris: Librairie Plon, 1957], p. 84.)

3. Contrat social, p. 465.

4. Pierre Maurice Masson, Rousseau et la Restauration Religieuse, Vol. III of La Religion de J.-J. Rousseau (Paris: Librairie Hachette et Cie., 1916), p. 355.

divinity of Jesus when he said: "Si la vie et la mort de Socrate sont d'un sage, la vie et la mort de Jésus sont d'un Dieu."¹ He affirmed his acceptance of Jesus as the mediator and judge of men in the next life when he said in regard to his enemies: "Mon voeu le plus ardent et le plus sincère est d'avoir Jesus-Christ même pour arbitre et pour juge entre eux et moi."² If one recognizes a Christian by his acceptance and belief in the Christ as a divine being, as the foundation of the Christian religion, Rousseau was a Christian.³

His Christianity is like his natural religion; that is, religion as he conceived it to be by the dictates of his own conscience. He endeavored to live according to the spirit of the Christian religion, "laissant à part toutes ces subtilités de doctrine, tous ces importants galimatias

1. Emile, p. 380.

2. Contrat social, p. 466.

3. Contesting the idea that Rousseau was not Christian Henri Guillemin writes: "Chateaubriand a, sur Jean-Jacques, cette phrase dans le Génie (III, IV, V): 'Il avait foi en quelque chose qui n'était pas le Christ mais qui pourtant était l'Evangile.' Qui n'était pas le Christ? Jean-Jacques n'eût pas admis ces mots; il eût réclamé contre cette exclusion. ... Le jour où il voit le petit Moultou inquiet, troublé, perdant la foi, Moultou qu'il avait connu si fervent, il le supplie, il le conjure de tenir bon, de croire toujours: 'Ah! comment avez-vous fait? ... Non, non, Moultou, Jésus que ce siècle a méconnu parcequ'il est indigne de le connaître, ... Jesus ne mourut point tout entier sur la croix!' (Henri Guillemin, "L'homme selon Rousseau," Annales de la Société Jean-Jacques Rousseau, XXX (1943-45), 7-26.)

dont les pharisiens embrouillent nos devoirs et offusquent notre foi."¹ The Christianity he preferred was that which he had learned in his youth, the religion of his fathers, "la religion la plus raisonnable et la plus sainte qui soit sur la terre."² Although he had been converted to Catholicism during his youth, he later became a Protestant again; his Christianity is basically Protestant, for he based his religious beliefs on reason and the Scriptures: "Il aspire à restaurer la religion Chrétienne sur ses bases évangéliques."³

1. Contrat social, p. 466.

2. Ibid. "Nous l'avons vu, la religion du père fait pour lui autorité." (Pierre Burgelin, Jean-Jacques Rousseau et la religion de Genève [Genève: Editions Labor et Fides, 1962], pp. 50-51.)

3. L. Brédif, Du Caractère intellectuel et moral de J.-J. Rousseau (Paris: Librairie Hachette et Cie., 1906), p. 116.

CHAPTER III

MORAL VALUES AND THEIR DISCERNMENT

In the same manner that Rousseau and Burlamaqui considered the study of man relative and important to the study of political institutions, they also asserted that moral values were an integral part of the laws of men. Rousseau declared: "Ceux qui voudront traiter séparément la politique et la morale n'entendront jamais rien à aucune des deux."¹ Burlamaqui's definition of what constitutes morality indicates that laws and morals cannot be separated: "On nomme Moralité le rapport des actions humaines avec la Loi qui en est la Règle et l'on appelle morale, l'assemblage des règles que nous devons suivre dans nos actions."²

The Discernment of Truth

Reason and moral instinct, considered by Rousseau and Burlamaqui to be the principal faculties which enable man to discern truth and moral values, are treated in this chapter rather than in the previous one because they serve as the basis of the respective systems of the two political philosophers, occupying a special place among man's faculties.

1. Emile, p. 279.

2. Droit naturel, p. 126.

Reason

In Burlamaqui's opinion, the foundation of morals, of natural law, of civil society is reason, the prince of man's faculties, "le flambeau de l'Ame."¹ His works are replete with references to reason. It is always referred to in positive, sometimes even reverential terms, because it is "le seul moyen qu'aient les hommes pour parvenir au bonheur."²

Burlamaqui's basic definition of reason as it is part of man's thought process is a commonly accepted one: "Raison, comme le terme l'indique, n'est qu'un Calcul. Raisonner c'est Calculer, et faire son compte, en balançant tout, pour voir enfin de quel côté est l'avantage."³ To reason is also to compare, to judge the relativity of things, to deliberate on what is best to do or not to do. Reason recalls the past, joins it to the present, and envisages the future.

Burlamaqui also defines reason as a composite of all man's other faculties, in the same manner that he defines understanding as a composite of the faculties of the soul: "L'on entend encore quelquefois par la Raison, prise dans un sens plus vague et plus étendu, l'Ame elle-même,

1. Droit naturel, p. 170.

2. Elémens, p. 11.

3. Droit naturel, p. 54.

envisagée avec toutes ses facultez, et comme en faisant actuellement un bon usage."¹ The distinction between reason and understanding is that reason is understanding perfected. Thus while Burlamaqui considers in one sense both reason and understanding as a combination of the other simple faculties of the soul, reason, the superior of the two, always implies proper use of one's faculties: "Le terme de Raison emporte toujours une idée de perfection."²

When he speaks of reason with the connotation of perfection, what he means is right reason, as he makes plain in the following passage: "La Raison, ... lors qu'elle se trouve bien cultivée et dans cet état de perfection où elle fait user de tout le discernement qui lui est propre, s'appelle la Droite Raison."³ However, he often uses the term reason both in the sense of right reason and in the ordinary usage (comparison, judgment, etc.) of the term.

When he speaks of reason being perfect, it is obvious that he associates reason with God, for He alone is perfect. Burlamaqui makes this clear when he says: "Le langage de la Raison est donc le langage de Dieu même."⁴ God made man good and gave him faculties whereby he might discern truth

1. Ibid., p. 36.

2. Ibid., p. 35.

3. Ibid., pp. 58-59.

4. Ibid., p. 163.

and thereby obtain happiness. When he uses these faculties correctly, when he discerns the truth it is by the use of reason, the language of God himself. It is this latter aspect of his concept of reason that makes Burlamaqui differ with so many other eighteenth-century philosophers who also lauded reason. They would agree with Burlamaqui that reason involves comparison, judgment and reflection, but they deny that it involves divine inspiration, that it is the language of God.

If man is to have a true discernment of those things in life which will contribute to his perfection and happiness, being not perfect himself, he must enlighten and improve his reason. Reason can discern the truth only inasmuch as it is in harmony with the source of all truth--the Creator. Thus man must endeavor to so perfect his reason that he may be in harmony with this source: "Il ne faut rien négliger pour perfectionner notre Raison, en apprenant à discerner le vrai du faux, l'utile du nuisible, pour acquérir une juste connoissance des choses qui nous intéressent et pour en bien juger."¹

Reason thus developed and perfected has the power to dominate all the negative impulses within man. When passions predominate, when a man does something destructive, then that man is not guided by reason. It is not a matter

1. Ibid., p. 184.

of passions dominating reason; a man subjugated by passions is not reasonable. When one recognizes a truth by reason, reason prevails: "La Raison semble nous commander avec empire tout ce qu'elle reconnoît être un moyen droit et sûr d'avancer notre félicité."¹ The principle is similar to Kant's categorical imperative or Rousseau's notion of conscience.

Burlamaqui ascribes to reason a quality of absoluteness not ordinarily assigned to man's reasoning powers. Whereas his concept includes the ordinary definition of the term, there is another quality he ascribes to reason which implies perfection and the notion of absolute values. This exalted concept of reason makes it part of the natural law itself: natural law is the law which God imposes on man and which enables him to obtain happiness; being made by God, this law is like God himself perfect; since this law is revealed to man by reason, reason itself implies perfection or an absolute. Reason, or right reason, is a perfect knowledge of truth; it is perfect and absolute in the same sense that God, whose language is reason, is perfect and the source of absolute truth.

While there are similarities in Burlamaqui's and Rousseau's notion of reason, the latter does not extol reason

1. Ibid., p. 59.

as does the former. Rather it is conscience to which Rousseau assigns the exalted role Burlamaqui ascribes to reason. Reason and conscience are closely related in Rousseau's opinion, but it is the latter which he prefers to associate more directly with Deity.

In some instances Rousseau even condemns reason: "Si elle [nature] nous a destinés à être sains, j'ose presque assurer, que l'état de réflexion est un état contre Nature, et que l'homme qui médite est un animal dépravé."¹ He is referring here to the emerging of the man of nature into society. Unlike Burlamaqui, he believes that when the original natural man began to reason it was "un état contre Nature." By meditating he became "un animal dépravé" because as an instinctual being, like an animal, he had no need to use his reason to survive. When he began to reason, the effects were pernicious. In the Discours sur l'Inégalité he refers to this transition by saying: "Il me reste à considérer et à rapprocher les différens hazards qui ont pu perfectionner la raison humaine, en détériorant l'espèce, rendre un être méchant en le rendant sociable."² Once the transition has been made, however, man cannot return to the state of nature; he becomes both a sociable and a reasoning being. It is from this point that Rousseau can speak in

1. (DI) Oeuvres complètes, III, p. 138.

2. Ibid. p. 162.

positive terms about reason: "C'est un grand et beau spectacle de voir l'homme sortir en quelque maniere du néant par ses propres efforts; dissiper, par les lumieres de la raison, les ténébres dans les quelles la nature l'avoit enveloppé."¹

Nevertheless, there is another aspect of Rousseau's criticism of reason which pertains to modern man living in society. This criticism is directed at what Rousseau more properly called on one occasion the "subtilités du raisonnement."² It is the subtleties of reasoning which make men forget their natural duties toward their fellow men; it is this kind of reasoning by which philosophers construct complicated systems detrimental to human welfare, by which they engender selfishness and justify themselves for their own inhumanity. If a man is being killed in the street, the philosopher does not pay him heed: "Il n'a qu'à mettre ses mains sur ses oreilles et s'argumenter un peu, pour empêcher la Nature qui se revolte en lui de l'identifier avec celui qu'on assassine."³

The philosopher, the man who reasons or resorts to the subtleties of reason, errs when he stops the cry of nature within him, when he stifles the sense of pity within

1. (DS) Oeuvres complètes, III, p. 6.

2. Emile, p. 348.

3. (DI) Oeuvres complètes, III, p. 156.

which is part of human nature. The key to Rousseau's thoughts on reason is this: When reason is in harmony with nature it is good, when it is contrary to nature it is bad. Reason is part of man's makeup as a social being; it is necessary and good, but only if it is in accord with the voice of nature: "La voix de la nature et celle de la raison ne se trouveroient jamais en contradiction si l'homme ne s'étoit lui-même imposé des devoirs qu'il est ensuite forcé de préférer toujours à l'impulsion naturelle."¹ When reason is in harmony with nature, then Rousseau, like Burlamaqui, can refer to it as "un don du Ciel."²

It is evident that in regard to Rousseau's own personal search for truth and the construction of his moral, political and religious systems, he relied greatly upon reason. In regard to religious truth he said: "Les plus grandes idées de la divinité nous viennent par la raison seule."³ The Vicaire Savoyard said: "Ne donnez à mes discours que l'autorité de la raison."⁴ In the Discours sur l'Inégalité, the work where Rousseau paradoxically enough strongly condemned certain aspects of reason and society, he affirmed the importance he attached to reason by

1. (FP) Oeuvres complètes, III, p. 475.

2. La Nouvelle Héloïse, IV, p. 251.

3. Emile, p. 361.

4. Ibid., p. 360.

stating: "J'ai tâché d'exposer l'origine et le progrès de l'inégalité, l'établissement et l'abus des sociétés politiques, autant que ces choses peuvent se déduire de la Nature de l'homme par les seules lumières de la raison."¹

Rousseau denied that reason was innate:

Vous supposez, ainsi que ceux qui traitent de ces matières, que l'homme apporte avec lui sa raison toute formée, et qu'il ne s'agit que de la mettre en oeuvre. Or cela n'est pas vrai; car l'une des acquisitions de l'homme, et même des plus lentes, est la raison.²

Like Burlamaqui he considered reason to consist mainly of comparison and judgment, developed in man through a gradual process: "Il faut apprendre à voir deux objets à la fois; ... il faut apprendre à comparer les objets en grand nombre, à remonter par degrés aux causes, à les suivre dans leurs effets."³

Rousseau's and Burlamaqui's concept of reason has many points in common. Both attach a great deal of importance to reason as the means whereby man discerns truth. The major difference in their concept derives mainly from the degree of importance each attaches to this faculty of discernment. Rousseau sees reason as less absolute and infallible than Burlamaqui, whose praise of reason is as sustained as his praise of society. While Rousseau lauds

1. (DI) Oeuvres complètes, III, p. 193.

2. Contrat social, p. 457.

3. Ibid.

both reason and society, there is often the same ambivalence in his attitude toward reason as there is toward society.

Conscience or Moral Instinct

The similarity of Burlamaqui's notion of moral instinct and Rousseau's concept of conscience indicates a possible influence of the former on the latter: "Le chapitre III de la Seconde Partie des Principes du Droit naturel où Burlamaqui expose sa conception de l'instinct moral mérite de retenir notre attention, car il a pu exercer une certaine influence sur la pensée même de Rousseau."¹ It is to be noted, however, that although their ideas on moral instinct are similar, what Burlamaqui calls conscience is something quite different from what he calls moral instinct. Rousseau, on the other hand, uses the terms synonymously.

According to Burlamaqui conscience is reason or a certain aspect of reason: "La Conscience n'est proprement que la Raison elle-même, considérée comme instruite de la Règle que nous devons suivre, ou de la Loi Naturelle."² Conscience is the same as reason in that it involves judgment. It is an aspect of reason in that it always involves judgment of moral actions. Thus while reason implies

1. Robert Derathé, Le Rationalisme de J.-J. Rousseau (Paris: Presses Universitaires de France, 1948), p. 78.

2. Droit naturel, p. 255.

judgment and comparison in all facets of human thought process, conscience pertains more specifically to moral judgment. Rousseau, of course, rejected the concept of conscience based only on understanding and judgment proposed here by Burlamaqui, by the natural law school and the "philosophes de l'Encyclopédie dont l'article sur la conscience--s'inspirant de Barbeyrac--la définit très traditionnellement comme un acte de l'entendement."¹

Burlamaqui cites as an example of what he calls conscience the case of Judas. Judas was instructed in the rule or natural law which stated that whoever delivers up an innocent man to be put to death commits a crime. He committed that action, thus his conscience passed a moral judgment on the action indicating he had committed a crime. Burlamaqui insists on the fact that conscience supposes a knowledge of the law, and in particular the natural law. Once conscience is instructed in the law it must follow, it becomes "la Règle immédiate de nos actions."²

The judgment made by Judas is what Burlamaqui calls subsequent conscience because it followed the act committed. Subsequent conscience can be either tranquil or troubled.

1. François Bouchardy, "Une définition de la conscience par J.-J. Rousseau," Annales de la Société Jean-Jacques Rousseau, XXXII (1950-52), 170.

2. Droit naturel, p. 256.

Antecedent conscience precedes an action, and can be doubtful (based upon reasonable incertitude), scrupulous (the product of light and frivolous doubts), decisive, or probable.¹ Probable conscience is that basis of judgment which relies mainly upon authority and example, which is sustained by "un sentiment confus d'une convenance naturelle, et quelquefois aussi par des raisons populaires, qui semblent tirées de la nature même des choses."² Burlamaqui adds that most men are guided by this kind of conscience. Because the foundations of probable conscience are not solid, he states that one should always make an effort to enlighten his reason or conscience so that probable conscience will become "la Conscience démonstrative et bien éclairée."³ It is this latter, demonstrative or decisive conscience, which Burlamaqui recommends as the immediate rule of man's actions. It should be heeded whether one's judgment is right or wrong. It is better to do what one's conscience says is right, even though it might be wrong, than to do what one believes to be wrong. The latter implies disrespect to sovereign authority.⁴

1. Ibid., pp. 261-265.

2. Ibid., pp. 266-267.

3. Ibid., p. 268.

4. Ibid., p. 265.

Burlamaqui's admission that most people, or the common people, are guided mainly by probable conscience, that is by tradition, authority or example, would expose a weakness in his system of moral ethics if he did not establish another principle or guide in human conduct other than reason or conscience as the immediate rule of man's actions. If most men must base the morality of their actions on custom, or what they think is probably correct, one might question the validity of making conscience the universal rule of human conduct. Burlamaqui does not entirely eliminate the difficulty his assertion makes,¹ but he attempts to make up the deficiencies in his system in two ways. The first is by asserting that whereas all men are not guided by decisive conscience, all have the capability of improving their knowledge of truth, and thus are under the obligation to ensure that the judgments they make are correct. This of course does not alter the fact that in Burlamaqui's opinion the common people will still continue to be guided by probable conscience. The second means by which he provides a more universal basis to his system of morals is by his concept of moral instinct.

1. The difficulty applies not only to his system of morals wherein he makes conscience the immediate rule of our actions, but also to his system of natural law. He states that natural law is made known by reason alone, but he maintains that most men are not guided by reason, that the common man has not the capability of determining the laws of nature by reason. One might logically ask then, how can

Burlamaqui states that God gave man two means of discerning good from evil: "le premier n'est qu'une sorte d'instinct, le second est le raisonnement."¹ His definition of moral instinct is as follows: "J'appelle Instinct Moral ce penchant ou cette inclination naturelle, qui nous porte à approuver certaines choses, comme bonnes et louables; et à en condamner d'autres comme mauvaises et blâmables; indépendamment de toute réflexion."² He adds that if one prefers to call this instinct moral sense, as does a learned Scotsman,³ it can be defined as a faculty of the soul which discerns moral good and evil "tout d'un coup ... par une sorte de sensation et par goût, indépendamment du raisonnement et de la réflexion."⁴ Moral instinct can be

natural law obligate this majority of mankind who have a limited use of their powers of reasoning? The problem will be treated at more length in the next chapter.

1. Droit naturel, p. 164.

2. Ibid.

3. He is referring to Hutcheson who Gagnebin believes might have influenced Burlamaqui in his concept of moral instinct. (Gagnebin, op. cit., p. 109.)

4. Droit naturel, p. 165. De Félice disagrees with Burlamaqui that there is such a thing as "le prétendu sentiment moral" (Burlamaqui, Droit de la nature et des gens, I, p. 292), or as he calls it in another instance "ce fantôme anglais." (Ibid., p. 368.) He concludes that reason is man's "seul guide dans le discernement du bien et du mal." (Ibid., p. 292.) Gagnebin agrees with De Félice that Burlamaqui "a pris pour sentiment moral ce qui n'est que l'habitude de se conformer machinalement à la raison." (Op. cit., p. 110.)

compared to physical instinct which was given to man by nature "afin de nous déterminer plus vite et plus fortement là où la réflexion seroit trop lente."¹

Another reason moral instinct was given to man was to make up for the inability of many people to distinguish between good and evil by using their reason alone: "Car combien de gens négligeroient de réfléchir? Combien sont si grossiers et mènent une vie si animale, qu'à peine savent-ils développer trois ou quatre idées, pour former ce qu'on appelle un raisonnement?"² For this reason God gave man "un goût de vertu et de justice, qui prévient en quelque sorte le raisonnement."³

He gives more insight into what he means by moral instinct by describing some of its manifestations: it includes the sentiments of pity, thus on seeing another suffer, one's first desire is to give him succor; one's first impulse in receiving something good is to thank the benefactor; man's natural inclination to like his fellow man derives from this moral instinct; "un enfant, un homme grossier, sent que l'ingratitude est un vice, et se récrie sur une perfidie, comme sur une action noire et injuste."⁴

1. Droit naturel, p. 166.

2. Ibid., p. 167.

3. Ibid.

4. Ibid., p. 165.

Burlamaqui conceived of reason and moral instinct as working together in the discernment of truth, of good and evil. He described this working relationship as follows:

L'une donne la première indication, l'autre vérifie et prouve: l'une avertit des principes, l'autre applique ces principes et les développe: l'une sert de guide pour les cas les plus pressans et les plus nécessaires, l'autre démêle toutes sortes de convenances, et donne des règles pour les cas les plus particuliers.¹

Burlamaqui's method of discerning truth differs somewhat from Rousseau's. Moral instinct gives the first indication and reason proves the validity of the principle involved. According to Rousseau, reason gives a knowledge of truth and conscience or moral instinct verifies it. Rousseau relies on conscience or the heart as the final judge; Burlamaqui makes reason the ultimate authority.

Although they are closely related and work together in the discernment of truth, Burlamaqui maintained that moral instinct is subordinate or inferior to reason. Sometimes custom and the opinions of others so sway people that they mistake prejudice for the truth. It is by reason alone that one can rectify such error. Reason develops better the ideas and consequences of moral truths than does moral sense, "car on voit souvent que ceux qui n'ont que le premier sentiment, sont embarrassés et se méprennent, quand il

1. Ibid., p. 173.

s'agit d'en faire l'application à un cas tant soit peu délicat ou compliqué."¹ Reason also has a more universal application than moral instinct, "car l'instinct ne nous a été donné que pour un petit nombre de cas simples, relatifs à nôtre état naturel, et qui exigeoient une prompte détermination."²

Rousseau, on the other hand, proclaimed that conscience (Burlamaqui's moral instinct) is superior to reason. He believed that conscience or moral instinct is superior to reason due to the fact that the former senses things as they are, whereas the latter, mingling judgment with perception, distorts the original image or fact: "La vérité est dans les choses et non pas dans mon esprit qui les juge. ... Moins je mets du mien dans les jugements que j'en porte, plus je suis sûr d'approcher de la vérité: ainsi ma règle de me livrer au sentiment plus qu'à la raison est confirmée par la raison même."³ Conscience rather than reason is the true guide of man: "Trop souvent la raison nous trompe, nous n'avons que trop acquis le droit de la récuser; mais la conscience ne trompe jamais; elle est le vrai guide de l'homme."⁴ This is true especially in regard to moral

1. Ibid., p. 172.

2. Ibid.

3. Emile, p. 327.

4. Ibid., p. 348.

questions: "Dans toutes les questions de morale difficiles comme celle-ci, je me suis toujours bien trouvé de les résoudre par le dictamen de ma conscience plutôt que par les lumières de ma raison."¹

Rousseau, like Burlamaqui, believed that moral instinct is innate. He defined moral instinct or conscience as follows: "Il est donc au fond des âmes un principe inné de justice et de vertu, sur lequel, malgré nos propres maximes, nous jugeons nos actions et celles d'autrui comme bonnes ou mauvaises, et c'est à ce principe que je donne le nom de conscience."² The imperative that Rousseau assigns to conscience, the judgment made "malgré nos propres maximes," is lacking from Burlamaqui's concept of moral instinct. It is reason which exercises this imperative according to Burlamaqui; moral instinct, the auxiliary to reason, is only an aid, not the commander.

Besides agreeing with Burlamaqui that moral instinct is innate, Rousseau also believed it to be of divine origin. Their concepts in this respect resemble very much that of Pascal who conceived of conscience as being "un discernement spontané et sûr du bien et du mal. ... Sa voix est proprement la voix de Dieu, perceptible, non à la raison, mais

1. Rêveries, p. 47.

2. Emile, p. 352.

au coeur."¹ Rousseau affirmed his belief in the divine origin of conscience when he said: "Conscience! Conscience! instinct divin, immortelle et céleste voix; guide assuré d'un être ignorant et borné, mais intelligent et libre, juge infallible du bien et du mal, qui rends l'homme semblable à Dieu, c'est toi qui fais l'excellence de sa nature et la moralité de ses actions."² He also refers to conscience as "l'amour de l'ordre. ... Ce dernier amour, développé et rendu actif, porte le nom de conscience."³ It will be remembered that Rousseau also defined the goodness of God as love of order. Burlamaqui also states that "l'Etre tout Puissant, tout Sage et tout Bon, aime souverainement l'ordre."⁴

Rousseau, like Burlamaqui, also compared moral instinct to physical instinct.⁵ He said: "Elle est à l'âme ce que l'instinct est au corps."⁶ There are two basic instincts in man: "L'appétit des sens tend à celui du corps,

1. E. Baudin, La Philosophie de Pascal (Neuchâtel: Editions de la Braconnière, 1947), II, p. 246.

2. Emile, pp. 354-355.

3. Contrat social, p. 444.

4. Droit naturel, p. 329.

5. "Les deux auteurs cherchent à prouver qu'il y a chez l'homme des sentiments moraux innés et font état des instincts physiques dont personne ne conteste l'existence." (Derathé, Le Rationalisme de J.-J. Rousseau, p. 81.) He adds that they differ in that Burlamaqui's analogy does not have the same biological character as that of Rousseau. (Ibid., pp. 81-82.)

6. Emile, p. 348.

et l'amour de l'ordre à celui de l'âme."¹ Conscience or the love of order instinctively enables man to discern moral good or evil in the same way that the body instinctively senses physical good or evil.

Although establishing the supremacy of conscience over reason, Rousseau maintained that there is a natural relationship between the two. Conscience is separate from reason, yet works closely with the latter in the discernment of moral values: "La raison seule nous apprend à connaître le bien et le mal. La conscience qui nous fait aimer l'un et haïr l'autre, quoique indépendante de la raison, ne peut donc se développer sans elle."² Whereas conscience cannot develop without reason, so also is reason hampered in establishing moral values without conscience: "Connaître le bien, ce n'est pas l'aimer: l'homme n'en a pas la connoissance innée, mais sitôt que sa raison le lui fait connaître, sa conscience le porte à l'aimer: c'est ce sentiment qui est inné."³ But for conscience, reason could not guide men without leading them astray; men would wander "d'erreurs en erreurs à l'aide d'un entendement sans règle et d'une raison sans principe."⁴

1. Contrat social, p. 444.

2. Emile, p. 48.

3. Ibid., p. 354.

4. Ibid., p. 355.

In order to combat the prevailing opinion that reason alone is man's guide in the discernment of truth and that conscience is in reality reason, Rousseau often slighted the role of reason to establish the supremacy of conscience. In reality, reason in his viewpoint is very important in the discernment of moral values. On one occasion he wrote: "La conscience est donc nulle dans l'homme qui n'a rien comparé et qui n'a point vu ses rapports. Dans cet état, l'homme ne connoît que lui; ... il ne hait ni n'aime rien; borné au seul instinct physique, il est nul, il est bête."¹

It can be concluded that Rousseau's and Burlamaqui's ideas on the means by which man discerns truth are largely similar. The differences in their opinions derive mainly from the emphasis each one places on the role of reason on the one hand or moral instinct on the other as being the main element in discerning truth. Whereas Rousseau conceives of moral instinct as being man's principal guide in determining morals, Burlamaqui sees moral instinct as the main guide of only those who have not the ability to use the faculty of reason. According to Burlamaqui reason alone can discern truth and the natural law. Moral instinct reveals the truth but vaguely, and needs the verification of reason to clearly establish moral values. Rousseau disagrees

1. Contrat social, p. 444.

that reason alone can reveal natural law. Reason and conscience must work together to reveal truth, but it is conscience, not reason, which in the last analysis verifies the truth of a moral principle.

The Morality of Human Actions

Burlamaqui's concept of morals is directly related to his notion of reason and moral instinct. The latter reveal the natural law and the morality of human actions, albeit moral instinct is of lesser importance than reason. Moral actions are those which are in harmony with natural law. These actions must relate to a voluntary or conscious conformity to the law otherwise they are what Burlamaqui calls indifferent actions. Any action considered only in and of itself "comme un mouvement naturel de l'Esprit ou du Corps, est absolument indifférente, et ... l'on ne sauroit jusques-là lui attribuer aucune moralité."¹ If, for example, one performs an action without knowledge of the law, then there is no morality to the action.

Burlamaqui thus established moral instinct, reason and the will of God as "l'édifice du Droit Naturel, le Système de la Morale."² Since God is the author of natural law, his will is the foundation of morals:

1. Droit naturel, p. 229.

2. Ibid., p. 232.

Le vrai fondement de la Morale, est proprement la Volonté de l'Etre Suprême, manifestée et interprétée, soit par le Sentiment Moral, soit par la Raison. Ces deux moyens naturels, en nous apprenant à distinguer les rapports des actions humaines avec notre constitution, ou ce qui est la même chose, avec les fins du Créateur; nous font connoître par cela même ce que c'est que le bien ou le mal moral, l'honnête ou le deshonnête, ce qui est commandé ou ce qui est défendu.¹

Rousseau felt the need to establish moral values on a different basis than many of his contemporaries: "Il trouvait en face de lui une doctrine qui prétendait expliquer les idées morales soit par la coutume, soit par l'intérêt personnel, et qui ne reconnaissait aucun principe inné et universel de justice et de vertu."² Rousseau proposed that morals should be founded on such an innate principle of justice called conscience. He said of natural law: "Tout le droit de la nature n'est qu'une chimère, s'il n'est fondé sur un besoin naturel au coeur humain."³

He rejected the moral values of a corrupted society and appealed to the voice of conscience to establish true morality: "Il revendique les droits de la nature contre les artifices corrupteurs de la civilisation. L'athéisme, le matérialisme, le sensualisme de son temps lui paraissent les effets d'une société sophistiquée par l'abus des livres et

1. Ibid., p. 233.

2. Jules Barni, Histoire des Idées morales et politiques en France au XVIII^e Siècle (Paris: G. Baillière, 1866), II, p. 118.

3. Emile, p. 278.

du raisonnement."¹ In the second Discours he stated that men in society lack moral qualities because they live outside of themselves, because they do not search for moral values from within: "Au milieu de tant de Philosophie, d'humanité, de politesse et de maximes Sublimes, nous n'avons qu'un extérieur trompeur et frivole, de l'honneur sans vertu, de la raison sans sagesse, et du plaisir sans bonheur."² He thus advocated the establishment of moral values and the regeneration of the morals of society³ by beginning with the individual, by cultivating the voice of nature from within. When reason is in harmony with this voice, Rousseau like Burlamaqui, can say that reason and moral instinct, in harmony with God's will, are the foundations of natural law and morals.

Truth and Falsehood

Rousseau's notion of truth is always associated with justice: "Justice et vérité sont dans son esprit deux mots synonymes qu'il prend l'un pour l'autre indifféremment."⁴ Thus in his distinction between truth and falsehood, Rousseau

1. Janet, op. cit., p. 417.

2. (DI) Oeuvres complètes, III, p. 193.

3. For the noticeable influence Rousseau's ideas on moral regeneration had on the French Revolution, see Joan McDonald, Rousseau and the French Revolution 1762-1791 (London: The Athlone Press, 1965), pp. 164-165.

4. Rêveries, p. 51.

does not necessarily propose that that which is not true is a lie: "Tout ce qui, contraire à la vérité, blesse la justice en quelque façon que ce soit, c'est mensonge. ... Mais tout ce qui, contraire à la vérité, n'intéresse la justice en aucune sorte, n'est que fiction."¹

Referring to the fictitious stories told to children for their instruction, Burlamaqui said: "Il est bien évident que ces sortes de fictions n'ont rien d'opposé aux lois de la justice, ni au devoir de l'humanité."² He agreed with Rousseau that these kinds of stories are not lies because there is no injustice associated with the narration of them. He defines a lie as follows: "Le mensonge ... est ce vice qui nous porte à nous exprimer de propos délibéré d'une manière qui ne répond pas à ce que nous avons dans l'esprit."³ His definition of truth is two-fold: "La Vérité se prend ici en deux sens; ou pour la nature des choses, leur état et les rapports qu'elles ont entr'elles; ou pour des idées conformes à cette nature, à cet état et à ces rapports."⁴

According to Burlamaqui, man has a duty to tell the truth: "Cette obligation où nous sommes de dire la vérité est fondée, en général, sur le but que Dieu s'est proposé,

1. Ibid., p. 49.

2.. Elémens, p. 118.

3. Ibid., p. 117.

4. Droit naturel, p. 6.

en nous donnant la faculté de la parole, et sur l'harmonie qu'il a voulu établir entre nos pensées et nos discours."¹ He insisted that even in regard to indifferent matters, "nous devons toujours dire la vérité, soit en conséquence du respect que nous lui devons, soit pour maintenir cette confiance si nécessaire au bien de la société."² He pointed out that lying is habit forming, and that if one is accustomed to lying about things of little consequence, one is often induced to lie about issues of greater importance.

It is this attitude which marks the minor difference between his notion of truth and falsehood and that of Rousseau. Defending his thesis that truth is inseparably connected with justice, Rousseau depicted "l'homme vrai":

Il ne se fera guère de scrupule d'amuser une compagnie par des faits controuvés dont il ne résulte aucun jugement injuste ni pour ni contre qui que ce soit, vivant ou mort. Mais tout discours qui produit pour quelqu'un profit ou dommage, estime ou mépris, louange ou blâme contre la justice et la vérité, est un mensonge qui jamais n'approchera de son coeur, ni de sa bouche, ni de sa plume.³

It is true that there is a big difference between the two kinds of falsehood Rousseau describes here; the latter unjust kind of lying is certainly more worthy of reproof. Nevertheless, the indifference to truth of no moral

1. Ibid., p. 116.

2. Ibid., p. 117.

3. Rêveries, p. 50.

consequence shown by Rousseau here had a direct influence on his life. He relates, for example, during this same fourth Promenade, that when he was once invited to dinner by some friends, he was asked if he had ever had any children. Confused and embarrassed he said no. Later, reflecting on the matter, he confessed that he should have had the presence of mind to give a spirited reply which would not have necessitated his having to lie.

Applying this incident to what he said about his "homme vrai", it can be seen that the innocent kind of falsehood he refers to is not altogether without consequence. It is true that in telling the lie about his children he did not do injustice to anyone (except perhaps to himself). It was not a lie dictated by evil intent but by weakness. Although it did not bring on disastrous consequences to anyone, it was a source of embarrassment to him and he regretted having done it. Such inability to tell the truth when it is painful might well be the result of his compromising attitude toward innocent lying. Burlamaqui said: "Si l'on se permet de mentir, de feindre ou de dissimuler sur de légers sujets, on contracte insensiblement une habitude qui, dans la suite, nous porte à manquer de sincérité dans les occasions les plus importantes."¹ Toward the end of his essay

1. Elémens, p. 117.

on truth, the fourth Promenade, Rousseau seemed to recognize this fact as he confessed:

Je ne sens pourtant pas mon coeur assez content de ces distinctions pour me croire tout à fait irrépréhensible. ... Quand la stérilité de ma conversation me forçait d'y suppléer par d'innocentes fictions j'avais tort, parce qu'il ne faut point, pour amuser autrui, s'avilir soi-même; et quand, entraîné par le plaisir d'écrire, j'ajoutais à des choses réelles des ornements inventés, j'avais plus de tort encore parce qu'orner la vérité par des fables c'est en effet la défigurer. ... Jamais la fausseté ne dicta mes mensonges, ils sont tous venus de faiblesse, mais cela m'excuse très mal. Avec une âme faible on peut tout au plus se garantir du vice, mais c'est être arrogant et téméraire d'oser professer de grandes vertus.¹

In essence, then, Rousseau and Burlamaqui agree on the necessity of telling the truth, and their high estimation of truthfulness is the same. Rousseau alone confesses, in an admirable passage, his having excused himself from being as truthful as he thought he should have been due to personal weakness. They agree as well that there are differing degrees of falsehood which are not of the same consequence, that justice is an inherent part of truth. Burlamaqui undoubtedly would agree with Rousseau when he wrote: "La vérité générale et abstraite est le plus précieux de tous les biens."²

1. Rêveries, pp. 59-60.

2. Ibid., p. 44.

Good and Evil

The problem confronting Rousseau and Burlamaqui regarding their concept of the root cause of evil stems from their concept of the inherent goodness of man. If man was created by God as a being disposed to do good, how then does one explain evil and the atrocious acts committed by evilly disposed persons in this world? It was a problem which perplexed many eighteenth-century philosophers.¹ It has been shown that there are certain social implications in Rousseau's concept of the corruption in society that are not found in Burlamaqui's notion. Other than this fact, however, their views on the nature of good and evil are quite similar.

Burlamaqui's definition of good and evil actions is typically simple and clear: "Une Action moralement Bonne ou Juste est celle qui est en elle-même exactement conforme à la disposition de quelque Loi obligatoire, et qui d'ailleurs est faite dans les dispositions et accompagnées des circonstances conformes à l'intention du Législateur."²

Evil or unjust actions are those which are contrary to law or to the intention of the legislator. He insists that a good

1. Voltaire wrestled with the problem in such works as Candide and Zadig. His remarks in the poem on the disaster of Lisbon evoked a critical response from Rousseau who disagreed with him on the cause of evil in the world.

2. Droit naturel, p. 128.

or an evil act is one which not only is in harmony or disharmony with the law, but also with the intent of the law or the legislator because some acts might only have the appearance of good or evil. For example, although being generous to one's fellow citizens is a good act in itself, if the aim of this generosity is to further ambition and usurp power, the act is evil and unjust.

Rousseau asserted that not only the intention of a good action must be good, but all its other aspects as well: "Une action pour être juste et bonne doit être telle non seulement dans sa fin mais encore selon toutes les relations qu'elle peut avoir. Au contraire toute action vicieuse à un seul égard quelque louable qu'elle put être d'ailleurs devient mauvaise en soi."¹ Burlamaqui had this principle in mind when he maintained that according to the degree that evil actions are bad, or are in opposition or conformity to law, they are more or less vicious; by the same token, since good actions are good in all their aspects, "à proprement parler, toutes les actions justes le sont également; puisqu'elles ont toutes une exacte conformité avec la Loi."²

In regard to the origin of good or bad actions and the responsibility the individual has in their performance, Burlamaqui proposed the following explanation:

1. (FP) Oeuvres complètes, III, p. 555.

2. Droit naturel, p. 131.

Il est bien sûr qu'à l'égard du Bien et du Mal en général et considérés comme tels, nous ne saurions proprement faire usage de la Liberté, puisque nous nous sentons entraînés vers l'un par un penchant invincible, et détournés de l'autre par une aversion naturelle et insurmontable. C'est l'Auteur de nôtre être qui l'a voulu ainsi, sans qu'il dépende de l'homme de changer à cet égard sa nature. Nous sommes faits de telle manière que le Bien nous attire nécessairement, au lieu que le Mal, par un effet opposé, nous repousse, pour ainsi dire, et nous écarte. Mais cette tendance si forte vers le Bien, et cette aversion naturelle pour le Mal en général, n'empêchent pas que nous ne demeurions parfaitement libres à l'égard des Biens et des Maux particuliers.¹

This being the case, it might be asked, why does man choose particular evil if he must of necessity shun evil in general? Burlamaqui replies that particular evil is the result of ignorance and weakness: "La malice, la cruauté, l'injustice, sont toujours une suite de l'ignorance ou de la faiblesse."² The concept is in harmony with and serves as a basis for his optimistic view of human nature: The Creator endowed man with those faculties needed for the latter's perfection and happiness; man thus created is by necessity motivated to do that which is good in general--he does not have a choice in the matter; when man does that which is evil it is by mistake, the result of weakness and ignorance.³

It is for the reason that men can be mistaken in their recognition of what is good and what is evil that

1. Ibid., pp. 22-23.

2. Ibid., p. 152.

3. His view is overly optimistic, of course, and

Burlamaqui recommends that one should continually improve his faculty of reason to better discern good from evil. Like Rousseau he claimed that man learns to discern and choose good by acquiring a love or taste for things that are good:

Il ne suffit pas d'avoir éclairé l'esprit sur la nature des biens et des maux qui peuvent nous rendre véritablement heureux ou malheureux; il faut encore rendre ces principes actifs et efficaces, en formant la Volonté à se déterminer par goût et par habitude, conformément aux conseils d'une Raison éclairée.¹

Rousseau, believing in the natural goodness of man, concluded also that the evil men do is the result of weakness and error. Since God's goodness stems from his omnipotence, man's evil must derive from his weakness: "Toute méchanceté vient de faiblesse; l'enfant n'est méchant que parce qu'il est faible; rendez-le fort, il sera bon: celui qui pourrait tout ne ferait jamais de mal."² Rousseau thought that the evil and suffering men produce is a result more of error than ignorance as Burlamaqui had affirmed: "Tous les maux des hommes leur viennent de l'erreur bien plus que de l'ignorance. ... Ce que nous ne savons point nous nuit beaucoup moins que ce que nous croyons savoir."³

would seem to overlook the magnitude and evil intent of the deliberate atrocities some men commit.

1. Droit naturel, pp. 67-68.

2. Emile, p. 48.

3. ("Lettre à Voltaire") Oeuvres complètes, III, p. 228.

On another occasion he wrote: "Il est très difficile de croire que jamais homme ait fait le mal pour le seul plaisir de mal faire. D'où je conclus qu'il y a dans toute notre conduite plus d'aveuglement que de malice."¹

Although they both agreed that evil is the result of error, ignorance and weakness, Rousseau and Burlamaqui asserted, nevertheless, that each man is responsible for his own actions, for the evil he does. The imputation of good or evil to the individual is a necessary part of Burlamaqui's system of natural law. Man is a free agent, and as such is responsible for the evil he does whether it be from weakness or ignorance that he commits the act.² Rousseau maintained that man is responsible for his own wrongdoing because of the faculties his Creator endowed him with which made him a free agent: "Ne m'a-t-il pas donné la conscience pour aimer le bien, la raison pour le connaître, la liberté pour le choisir? Si je fais le mal, je n'ai point d'excuse; je le fais parce que je le veux."³ In reply to Voltaire's poem on the Lisbon earthquake wherein the latter railed against Providence for evil and suffering in the world, Rousseau wrote: "Je ne vois pas qu'on puisse chercher

1. (FP) Oeuvres complètes, III, p. 555.

2. Total ignorance or inability to distinguish right from wrong is of course excusable according to Burlamaqui. (Droit naturel, pp. 282-283.)

3. Emile, p. 359.

la source du mal moral ailleurs que dans l'homme libre, perfectionné, partant corrompu."¹ In regard to physical evil or calamity that exists in the world, Rousseau pointed out that this is all part of man's environment which is governed by immutable natural laws. He slyly indicated that Voltaire himself had shown in Zadig that physical evil is sometimes relative, that a particular evil might result in a general good.

There is, however, an emphasis on the evil done by the individual as a result of the wicked influences of society in the works of Rousseau which is not to be found in Burlamaqui's several writings. Burlamaqui's laudatory estimation of society leaves little room for a severe condemnation of society as a corrupter of the individual. Rousseau indicated that man is responsible for his own evil actions, but he also asserted that society has, or can have, a corrupting influence on the individual and thus shares part of the responsibility for man's evil: "He created, as it were, a new subject of responsibility, of 'imputation.' This subject is not individual man, but human society."² Man in the state of nature is good; as he unites with his fellow man in the first societies he undergoes a change: "L'amour de soi mis en fermentation devient amour-propre. ...

1. Fellows and Torrey, op. cit., p. 515.

2. Cassirer, op. cit., p. 75.

Nul ne trouve son bien que dans le mal d'autrui."¹ It is in society that man acquires the passions and artificial wants which pervert the natural good impulses with which he was endowed by his Creator: "Voilà comment, l'homme étant bon, les hommes deviennent méchants."²

It might be concluded that Rousseau places the historical responsibility for evil with society, that he places the individual responsibility for evil with the individual who in turn is corrupted by society, and that he proposes the eradication of evil by the amelioration of society and instruction to the individual to heed his natural impulses. Man is good by nature; when corrupted by society he does evil through error and weakness. Society in its historical development was evil; it can be good, the instrument for the betterment of the individual--that is the subject of the Contrat social.

Virtue and Vice

Rousseau distinguishes good from virtue by indicating the latter is a quality in man that pertains only to the social state. In the original state of nature man is naturally good, but not virtuous because virtue supposes the existence of society and law or the general will: "La vertu

1. Contrat social, p. 445.

2. Ibid.

n'est que cette conformité de la volonté particulière à la générale."¹ Comparing beauty with virtue he said: "Comme on a dit que la beauté n'est que l'assemblage des traits les plus communs on peut dire que la vertu n'est que la collection des volontés les plus générales."² Vice or wickedness is just the opposite quality: "La méchanceté n'est au fond qu'une opposition de la volonté particulière à la volonté publique."³ When he says that virtue is obedience to the general will and wickedness is the contrary, he is not referring to conformity to an arbitrary code of ethics established by the majority of any given group. As will be discussed later, his concept of the general will implies absolute standards of goodness in the same manner that Burlamaqui's concept of reason and natural law implies inherent rectitude.

Burlamaqui agreed that virtue supposes the existence of law: "La Vertu consiste donc dans l'habitude d'agir conformément aux Loix; et le Vice dans l'habitude contraire."⁴ A virtuous man is one who habitually acts in conformity to the law and his duty while a vicious man habitually does the opposite:

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1. (DEP) Oeuvres complètes, III, p. 252.
 2. (FP) Oeuvres complètes, III, p. 483.
 3. Ibid.
 4. Droit naturel, p. 138.

Il faut considérer toute la suite de la vie et la conduite ordinaire d'un homme. L'on ne mettra donc pas au rang des hommes viscieux, ceux qui par foiblesse ou autrement se sont quelquefois laissé aller à commettre quelques mauvaises actions; comme ceux-là aussi ne méritent pas le titre de gens de bien, qui dans certains cas particuliers, ont fait quelque acte de vertu."¹

It is in the sense of virtue being habitual conformity to the natural law that Burlamaqui also defined it as "cette persévérance de l'Ame à suivre les conseils de la Sagesse."² Consistent with his all-inclusive definition of reason, he also said: "Cette sage direction de la Volonté se nomme proprement la Vertu: on la désigne aussi quelquefois par le terme de Raison."³

Rousseau objected to the establishment of virtue by reason alone: "On a beau vouloir établir la vertu par la raison seule, quelle solide base peut-on lui donner?"⁴ Consistent with his thoughts on what constitutes good, he wrote: "O vertu! ... Tes principes ne sont-ils pas gravés dans tous les coeurs, et ne suffit-il pas pour apprendre tes Loix de rentrer en soi-même et d'écouter la voix de sa

1. Ibid., pp. 138-139.

2. Ibid., p. 184. Perseverance implies struggle and effort. Barni indicates that this is Rousseau's concept of virtue as well: "La vertu, comme son nom l'indique, suppose l'effort, la lutte, le combat." (Op. cit., p. 139.)

3. Droit naturel, p. 36.

4. Emile, p. 356.

conscience dans le silence des passions?"¹ Virtue is a quality which men acquire in society or in association with their fellow man, but it is acquired by following the voice of conscience that tells one to be virtuous, to conform one's will to the general will.

That which is artificial in society is the opposite of virtue: "La parure n'est pas moins étrangère à la vertu qui est la force et la vigueur de l'âme."² It is for the reason that virtue must be acquired naturally and because constant preachment of virtue is often accompanied by affectation that Rousseau proposed teaching virtue to the citizens of Corsica indirectly: "Je ne leur prêcherai pas la morale, je ne leur ordonnerais pas d'avoir des vertus mais je les mettrai dans une position telle qu'ils auront des vertus sans en connoître le mot; et qu'ils seront bons et justes sans trop savoir ce que c'est que justice et bonté."³ Since man is naturally good, he will become virtuous if he is educated in a manner consistent with his natural impulses which are good. This, of course, is the foundation of the educational philosophy in Emile.

In his treatises on government, Rousseau proposed, as the solution for the eradication of vice in society,

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1. (DS) Oeuvres complètes, III, p. 30.
 2. Ibid., p. 8.
 3. (PCC) Oeuvres complètes, III, p. 948.

making the civil society simple and in harmony with human nature. A country that is too big and complicated engenders vice: "Les talens sont enfouis, les vertus ignorées, les vices impunis, dans cette multitude d'hommes inconnus les uns aux autres."¹ His antidote to such a large corrupt society was a smaller, more harmonious one with simple customs and morals. Burlamaqui also had a penchant for the simple virtues of small countries like Switzerland and city states like Sparta.

Burlamaqui asserted that the natural reward of virtue is happiness, and that vice produces the opposite effect. He believed that according to divine design physical evil is generally associated with moral evil, and that physical well-being accompanies virtuous conduct. For this reason, "il y a un contentement inséparable de la Vertu, qui ne peut jamais nous être enlevé."² Temporary suffering is not enough to erase this happiness and contentment in the virtuous person, "l'honnête homme."³ The fact that happiness generally accompanies virtue and sorrow vice, was used by Burlamaqui as a sanction of natural law. He indicated, however, that virtue is not always rewarded in this present life, whereas the wicked often prosper: "En général, l'expérience nous

1. (CS) Oeuvres complètes, III, p. 387.

2. Droit naturel, p. 308.

3. Ibid., p. 261.

montre, que le degré de bonheur ou de malheur dont chacun jouit en ce monde, ne se trouve pas toujours exactement proportionné et mesuré sur le degré précis de vertu ou de vice qui se rencontre en chaque personne."¹ For this reason he proposed as another sanction of natural law, the promise of recompense or punishment for virtue and vice in the next life.

Rousseau agreed with Burlamaqui in principle. He was convinced that the wicked could not have true happiness in life; nevertheless, having suffered so much in life himself, he was equally certain that the virtuous were not always happy in this world. In a letter to D'Offreville of Douai, Rousseau wrote:

Il est sûr encore que les méchants sont tous misérables, quel que soit leur sort apparent, parce que le bonheur s'empoisonne dans une âme corrompue, comme le plaisir des sens dans un corps malsain. Mais il est faux que les bons soient tous heureux dès ce monde. ... Quoiqu'il n'y ait que les gens de bien qui puissent vivre contents, ce n'est pas à dire que tout homme de bien vive content. La vertu ne donne pas le bonheur, mais elle seule apprend à en jouir quand on l'a; la vertu ne garantit pas des maux de cette vie et n'en procure pas les biens; c'est ce que ne fait pas non plus le vice avec toutes ses ruses; mais la vertu fait porter plus patiemment les uns et goûter plus délicieusement les autres.²

1. Ibid., p. 310.

2. Barni, op. cit., pp. 140-141.

Ethics of Freedom and Happiness

Considering man to be the creation of an all-wise, beneficent Creator, Burlamaqui and Rousseau believed that man's goal is his own happiness and perfection. Endowed with the liberty to so order his life as to obtain this goal, man has all the faculties necessary to procure his own well-being if he will but use them properly. The principal inclination given man to achieve his own betterment and happiness is self-love.

Self-Love

Burlamaqui wrote: "On peut dire que l'Amour de soi-même, (j'entens un amour éclairé et raisonnable) peut tenir lieu de premier principe à l'égard des devoirs qui concernent l'homme lui-même."¹ He denied that there is anything bad or depraved in self-love. Since God gave this sentiment to man, and since everything which comes from God is good, to imply that self-love is evil, "ce serait accuser l'Auteur de notre existence, et convertir en poison ses plus beaux présens."²

According to Burlamaqui, when love of self is in harmony with reason it serves as the interpreter of God's will to man. His insistence on self-love being in harmony

1. Droit naturel, p. 183.

2. Ibid., p. 55.

with reason indicates a similarity in his concept of inclinations and self-love. When inclinations are not controlled by reason, they become violent inclinations or passions. When not directed by reason, amour de soi-même also becomes perverted: "L'amour de nous-mêmes ne peut nous servir ici de principe et de règle, qu'autant qu'il est dirigé par la droite Raison, conformément à ce que demande notre nature et notre état. ... Autrement cet amour-propre deviendrait la source de mille injustices."¹ He concludes that one cannot condemn self-love because it becomes corrupted in some people just as one cannot condemn reason for the abuses men make of this faculty and from which come "les erreurs les plus grossières et les plus grands déreglemens."²

Rousseau agrees that self-love is good, that it is natural to man: "L'amour de soi-même est toujours bon, et toujours conforme à l'ordre. Chacun étant chargé spécialement de sa propre conservation, le premier et le plus important de ses soins est et doit être d'y veiller sans cesse."³ Rousseau also agrees with Burlamaqui that whereas self-love in itself is good and a natural part of man as he

1. Ibid., p. 183.

2. Ibid., p. 55. It is interesting to note here that Burlamaqui, who usually associates reason with perfection, admits that misuse of reason can be a pernicious thing. Rousseau would refer to this misuse of reason as the subtleties of reasoning.

3. Emile, p. 247.

was made by his Creator, "il ne devient bon ou mauvais que par l'application qu'on en fait et les relations qu'on lui donne."¹ The natural exercise or the good use of this sentiment Rousseau calls amour de soi-même, the misuse or corruption of self-love he calls amour-propre. It is Rousseau's notion of what causes amour-propre that differs with Burlamaqui's concept and in a manner typical of the general contrast in their thought.

Rousseau explains the corruption of self-love as follows:

La sensibilité positive dérive immédiatement de l'amour de soi. ... Ceci est une pure affaire de sentiment où la réflexion n'entre pour rien. Mais sitôt que cet amour absolu dégénère en amour-propre et comparatif, il produit la sensibilité négative; parce qu'aussitôt qu'on prend l'habitude de se mesurer avec d'autres, et de se transporter hors de soi pour s'assigner la première et meilleure place, il est impossible de ne pas prendre en aversion tout ce qui nous surpasse, tout ce qui nous rabaisse.²

It is only in society that man has the desire to compare himself with others. From this comparison, man egotistically takes aversion to the accomplishment of others and becomes puffed up with amour-propre. If man has few needs, if he thinks only of his own well-being and the well-being of others without trying to compare or elevate himself above them, he will be motivated by amour de soi-même

1. Ibid., p. 81.

2. Rousseau Juge de Jean-Jacques, p. 149.

instead of amour-propre: "Ce qui rend l'homme essentiellement bon est d'avoir peu de besoins, et de peu se comparer aux autres; ce qui le rend essentiellement méchant est d'avoir beaucoup de besoins, et de tenir beaucoup à l'opinion."¹ Amour de soi is content when man's few needs are met; amour-propre, dependent upon so many needs, continually seeking preference and comparison, is never content: "Voilà comment les passions douces et affectueuses naissent de l'amour de soi, et comment les passions haineuses et irascibles naissent de l'amour-propre."²

The child, like the natural man, is guided only by amour de soi. Because a child harkens naturally to the sentiment of self-love which in turn fosters love of others, "un enfant est donc naturellement enclin à la bienveillance."³ As it develops, however, it acquires the habits of adults, the habit of comparison and preference. For this reason, Rousseau proposes in Emile and elsewhere, that a person's education be such that he let himself be guided by the voice

1. Emile, p. 249. Derathé observes that Rousseau's "théorie de l'amour-propre distingué de l'amour de soi est d'inspiration hobbenne. C'est Hobbes qui lui a appris que les besoins divisent les hommes autant qu'ils les unissent." (Rousseau et la Science politique, p. 110.) He points out that Rousseau differs with Hobbes, however, in that the former believed that amour-propre did not exist in the state of nature, but is a product of sociability and reflexion. Hobbes, on the other hand, said that amour-propre was a natural quality in man. (Ibid., p. 140.)

2. Emile, p. 249.

3. Ibid., p. 248.

of nature, by the natural sentiment of self-love. Once the canker of amour-propre has taken root, it is difficult to eradicate it: "Il n'est plus tems de changer nos inclinations naturelles quand elles ont pris leur cours, et que l'habitude s'est jointe à l'amour-propre."¹

It is interesting to note that in his own life, Rousseau felt he was more inclined to amour-propre when he most frequented society: "Je n'eus jamais beaucoup de pente à l'amour-propre; mais cette passion factice s'était exaltée en moi dans le monde, et surtout quand je fus auteur; j'en avais peut-être encore moins qu'un autre mais j'en avais prodigieusement."²

Happiness

Rousseau asserted that man was created to be happy: "Il faut être heureux, cher Emile: c'est la fin de tout être sensible; c'est le premier désir que nous imprime la nature, et le seul qui ne nous quitte jamais."³ For this reason, "le bonheur est donc pour Rousseau la fin vers laquelle tend tout effort humain et partant toute action éducative."⁴ Burlamaqui agreed: "Or, pour peu que l'homme

1. (DEP) Oeuvres complètes, III, p. 260.

2. Rêveries, p. 112.

3. Emile, p. 564.

4. G. Bretonneau, Valeurs Humaines de J.-J. Rousseau (Paris: La Colombe, Éditions du Vieux Colombier, 1961), p. 266.

réfléchisse sur lui-même, il reconnoît bien-tôt qu'il ne fait rien qu'en vue de son Bonheur, et que c'est la dernière fin qu'il se propose dans toutes ses actions, ou le dernier terme auquel il les rapporte."¹

Burlamaqui defines happiness as "cette satisfaction intérieure de l'Ame, qui naît de la possession du Bien."² He is referring, of course, to general not particular good. In the same way that man acts to procure his own happiness but does not in fact always achieve this goal, he also is motivated to seek good in general, although in doing so he often obtains that which is not good. General good and particular good are to be distinguished: "Le bien du Tout est le véritable bien; celui d'une des Parties, opposé au bien du Tout, n'est qu'un bien apparent, et par conséquent un vrai mal."³

Both writers agreed that happiness comes from well-doing. Rousseau said: "Je sais et je sens que faire du bien est le plus vrai bonheur que le coeur humain puisse goûter."⁴ Burlamaqui upheld the same principle when he

1. Droit naturel, p. 53.

2. Ibid., p. 56.

3. Ibid., p. 63. As will be shown in the next chapter, this relationship between general and particular good is exactly the same which Rousseau establishes between the general will and a particular will.

4. Rêveries, p. 76.

asserted: "Un plaisir pur accompagne toujours les actions que la Raison approuve."¹

Paradoxically enough, while Rousseau believed that it was society which made man unhappy, he also believed that in the original state of nature man could not be truly happy: "En dehors de la société, le problème du bonheur perd toute signification. L'homme de la nature n'était ni heureux, ni malheureux: il végétait, sans plus, occupé à assouvir paisiblement ses instincts, forts d'une innocence dont il ne savait rien."² True happiness does not consist merely in following natural instincts. Such instinctual heeding the voice of nature as was characteristic of the primitive natural man, would produce nothing more than contentment. Happiness is something more: it implies the use of conscience and is closely related to virtue. Happiness is different than the temporary satisfaction of pleasure: "Le bonheur n'est pas le plaisir; il ne consiste pas dans une modification passagère de l'ame, mais dans un sentiment permanent et tout intérieur dont nul ne peut juger que celui qui l'éprouve."³ It implies doing good to others--a condition which requires man's living in society.

1. Droit naturel, p. 261.

2. Robert Mauzi, L'Idée du Bonheur dans la Littérature et la Pensée françaises au XVIII^e Siècle, 2nd. ed. (Paris: Librairie Armand Colin, 1965), pp. 597-598.

3. (FP) Oeuvres complètes, III, p. 510.

Rousseau also believed that the source of happiness is within and that man is happy when he listens to the voice of nature. The wicked always lack the inner peace which the righteous enjoy. Rejected by society, Rousseau, unlike Burlamaqui who found the greatest pleasure in the society of which he was a part, of necessity looked for happiness from within. His last major work is a good example of such a quest: "Les Rêveries sont, par excellence, celles d'un retour éclairé sur soi, d'une 'vie heureuse et douce' qui se connaît bien en ses ressorts les plus intimes, de cette 'paix de l'âme' qui apporte 'la suprême félicité.'"¹

More realistic than Burlamaqui, Rousseau recognized that there are many limitations placed upon man's attainment of happiness in this life. He understood that the righteous often suffer in life while the wicked prosper: "A considérer l'état présent des choses; le méchant prospère, et le juste reste opprimé."² He sought happiness in revery and solitary contemplation, but admitted that such joy is not complete. His concluding thought on the matter is that a fullness of joy can only be obtained in the next life: "Quand, délivrés des illusions que nous font le corps et les sens, nous jouirons de la contemplation de l'Etre suprême et des vérités éternelles dont il est la source; ... c'est alors que la

1. G. Bretonneau, op. cit., p. 259.

2. Ibid., p. 343.

volupté pure qui naît du contentement de soi-même, et le regret amer de s'être avili, distingueront par des sentiments inépuisables le sort que chacun se sera préparé."¹

The burden of Burlamaqui's thoughts on happiness rests with obtaining happiness in this life. In his typically optimistic manner he believed that man was perfectly capable of obtaining all the happiness in this life which his Creator designed him to obtain.² The faculties which God had endowed man with were specifically created to procure man's happiness: "La Perfection de l'homme consiste véritablement dans la possession des facultez soit naturelles, soit acquises, qui nous mettent à portée d'acquiescer, et qui nous font acquiescer en effet un solide bonheur; et cela en conformité des intentions de notre Auteur."³

Unlike Rousseau, he believed that happiness could be obtained by the use of reason alone.⁴ Whereas man does

1. Emile, pp. 344-345.

2. Gagnebin thinks that Burlamaqui's concept of happiness might have been influenced by the English optimists such as Clarke, Pope, Shaftesbury and Bolingbroke. He states that Burlamaqui's ideas on happiness are especially similar to those of Pope. (Op. cit., p. 128.)

3. Droit naturel, p. 253.

4. Mauzi has remarked about the difference in Rousseau's and Burlamaqui's concept: "Les Principes du droit naturel de Burlamaqui sont directement inspirés par la raison normative. ... Et cette raison est toujours la même: tendre vers 'tout ce qui est propre à nous rendre heureux ou du moins qui nous paraît tel.' ... Elle possède la connaissance infuse de la loi morale, et l'on n'a même pas besoin de cette

not undertake anything except with the purpose of procuring his own happiness, "c'est uniquement par la Raison que l'homme peut y parvenir."¹ Since God wills man's happiness, since reason approves all that which provides for man's happiness, and since man necessarily seeks happiness, one might expect only happiness to be the lot of man.² Such is not the case, however, because man, being imperfect, is often weak and ignorant, and does not always make correct use of his reason.

Like Descartes, Burlamaqui proposed rules for the proper use of reason. These rules which enable man to obtain happiness, to avoid the pitfalls of erroneous judgment by the use of right reason are: (1) careful examination to determine what is truly good or evil; (2) determining whether the goal sought is compatible with the nature of

'conscience' que Rousseau devra réintroduire pour briser l'euphorie dangereuse de l'optimisme rationaliste." (Op. cit., p. 522.)

1. Droit naturel, p. 56.

2. Mauzi indicates that his system is too ideal: "Il [Burlamaqui's Droit naturel] repose sur une reconstruction idéale et quasi géométrique de la nature humaine. ... En voulant à tout prix réduire l'homme à l'unité, la pensée 'philosophique' aboutit, sous son apparente clarté, à tout confondre et substitue à l'homme réel un être imaginaire, ignorant la tentation et le déchirement. Les hommes de ce temps si riche d'humanité pouvaient-ils s'y reconnaître?" (Op. cit., pp. 522-523.) Gagnebin remarks about one of Burlamaqui's statements concerning happiness and the ability of government to procure for man this happiness: "On nage en pleine euphorie ... et en plein XVIII^e siècle." (Op. cit., p. 173.)

man; (3) comparison of present good or evil with future good or evil; (4) determining whether a good will bring a greater evil; (5) giving preference to the greatest good; (6) in case of doubt, seeking the good which is most "vraisemblable"; (7) acquiring a taste or penchant for true good.¹

Rousseau and Burlamaqui agreed that the purpose of government is to procure man's happiness. Burlamaqui said that it was the duty of the sovereign to obtain for his subjects "un véritable bonheur."² He stated as well that people give sovereigns the right to command in order that they might procure "ainsi le bonheur des hommes."³ Rousseau wrote: "Rendre heureux les peuples, ... est ou doit être l'unique but du gouvernement."⁴ Strictly speaking, government does not make people happy, for that is something which must come from within. Good government, however, can provide conditions whereby happiness is obtained: "Il n'y a aucun gouvernement qui puisse forcer les Citoyens de vivre heureux, le meilleur est celui qui les met en état de l'être s'ils sont raisonnable(s)."⁵

1. Droit naturel, pp. 61-68.

2. Droit politique, p. 25.

3. Ibid., p. 32.

4. (EASP) Oeuvres complètes, III, p. 656.

5. (FP) Oeuvres complètes, III, p. 513.

Liberty

Burlamaqui defined liberty as "cette force de l'Ame par laquelle elle modifie et règle ses opérations comme il lui plait."¹ However, liberty does not imply doing whatever one wishes; this, according to Burlamaqui, is license: "Il faut donc bien distinguer la liberté de la licence qui n'est autre chose qu'une liberté dérégulée, contraire à nos devoirs, et qui va à nous rendre malheureux."² Liberty implies the use of reason. For this reason, Burlamaqui maintained that although men are born free, young people must have a portion of their freedom curtailed. They must have parents and tutors make many of their decisions for them: "L'homme ne doit jouir de la liberté qu'autant qu'il est raisonnable, puisqu'il n'est véritablement libre que lorsque sa raison est parvenue au point de perfection et de maturité."³

Rousseau was as convinced as Burlamaqui that man is a free agent, that liberty is part of his nature: "Il n'y a point de véritable volonté sans liberté. L'homme est donc libre dans ses actions."⁴ Liberty thus is an inalienable right of men, "un don qu'ils tiennent de la Nature en

1. Droit naturel, p. 17.

2. Elémens, p. 60.

3. Ibid., p. 59.

4. Emile, p. 340.

qualité d'hommes."¹ Rousseau and Burlamaqui agreed that liberty is a result of obedience to law. The principle was also expressed by their predecessors and other political writers of their time: Locke was especially emphatic on this point,² so was Montesquieu who said: "La liberté est le droit de faire tout ce que les lois permettent."³

Burlamaqui indicated that unless the law impedes men from infringing upon the rights of others, there is no liberty for anyone. This was the great disadvantage of the state of nature. All men were independent one of another, and although the natural law affords liberty to all, it cannot ensure that one man does not curtail the freedom of another. If men did not surrender a portion of their freedom to become subject to civil law, maintained Burlamaqui, they would have been enslaved by those in the natural state who were the strongest and most aggressive. He concluded that since civil law ensures men the natural rights afforded them by natural law, since civil law hinders those who would rob others of their liberty, obedience to civil law affords men the greatest exercise of their liberty: "Il faudra conclure que la liberté dont l'homme jouit dans cet état, est beaucoup plus parfaite, plus assurée et plus

1. (DI) Oeuvres complètes, III, p. 184.

2. Gagnebin, op. cit., p. 169.

3. Montesquieu, De l'Esprit des Lois (Paris: Editions Garnier Frères, 1961), I [Bk. XI, Ch. 3], p. 162.

propre à procurer son bonheur, que celle dont il jouissait dans l'Etat de Nature."¹

Burlamaqui affirmed that men, when uniting in the civil society, can only renounce that portion of their liberty which the natural law allows. He did not imply that a state can take away all of man's rights. He maintained, in fact, that it is impossible for a man to entirely renounce his liberty:

Il n'est pas même permis à l'homme de renoncer à sa liberté, d'une manière absolue, et sans réserve. La raison en est, qu'il se mettroit par là hors d'état de s'acquitter de ses devoirs, ce qui n'est jamais permis. Mais, au contraire, il est permis, et même louable de renoncer à une partie de sa liberté, si par-là on se met d'autant mieux en état de satisfaire à ses devoirs, ou si l'on se procure quelque avantage considérable. C'est l'état de l'homme dans la société civile.²

Rousseau was no less emphatic than Burlamaqui in maintaining that liberty comes from obedience to law: "Il n'y a de liberté possible que dans l'observation des Loix ou de la volonté générale, et il n'est pas plus dans la volonté générale de nuire à tous, que dans la volonté particulière de nuire à soi-même."³ The assertion that liberty comes only from obedience to law or the general will, and

1. Droit politique, p. 15.

2. Elémens, p. 60.

3. (LDM) Oeuvres complètes, III, p. 891.

the absolute authority which Rousseau gives to the volonté générale have led many critics to consider him the totalitarian opponent of liberty.¹ Scholars such as Derathé and Cassirer, however, point out that this absolute power that Rousseau gives to the general will actually ensures the people their liberty rather than robs them of it.²

Although Rousseau does give an authoritarian spirit to his concept of the general will, he could not advocate the political despotism some attribute to his thought without contradicting all his other ideas on personal liberty. His notion of liberty consisting of obedience to law is the same as that of Burlamaqui and Montesquieu who also maintained a man is free by obeying law. A comparison of his concept with that of Burlamaqui will demonstrate their similarity.

Like Burlamaqui, Rousseau affirmed that without civil law, man in the natural state could not be protected

1. See, for example, Emile Faguet, La Politique comparée de Montesquieu, Rousseau et Voltaire (Paris: Société Française d'Imprimerie et de Librairie, 1902), p. 17. See also Lester G. Crocker, Rousseau's Social Contract (Cleveland: The Press of Case Western Reserve University, 1968), p. 170.

2. See Derathé, Rousseau et la Science politique, pp. 348-349. Cassirer states: "To him freedom did not mean arbitrariness but the overcoming and elimination of all arbitrariness, the submission to a strict and inviolable law which the individual erects over himself. Not renunciation of and release from this law but free consent to it determines the genuine and true character of freedom. And that character is realized in the volonté générale, the will of the state." (The Question of Jean-Jacques Rousseau, p. 55.)

from assault on his liberty by others. Where lawlessness abounds, there is no liberty: "Où cesse la vigueur des loix et l'autorité de leurs défenseurs, il ne peut y avoir ni sûreté ni liberté pour personne."¹ Thus by surrendering a part of his freedom (that part which would permit him to infringe upon the rights of others) by uniting in the civil society or under the sovereignty of the general will, man becomes more free than before because without law he can never be sure his liberty will be preserved. This is what he had in mind when he wrote: "J'aurois voulu vivre et mourir libre, c'est-à-dire tellement soumis aux loix que ni moi ni personne n'en pût secouer l'honorable joug."²

Rousseau, like Burlamaqui, did not imply that one is more free in a despotic civil society than in the independent state of nature. He said: "La liberté sans la justice est une véritable contradiction."³ One is more free under civil law than in the independent state of nature only when that law ensures one's natural rights.

Rousseau also affirmed that inasmuch as liberty comes from obedience to law, one is more or less free according to his knowledge of law and his obedience to that law which affords liberty. Liberty thus implies education

1. (DI) Oeuvres complètes, III, p. 117.

2. Ibid., p. 112.

3. (LDM) Oeuvres complètes, III, p. 842.

and learning to live according to just law. It is not always easy to be free: "La liberté est un aliment de bon suc mais de forte digestion; il faut des estomacs bien sains pour le supporter."¹ Liberty is not something that can be enjoyed by the lawless or the seditious elements of society because they are not willing to live according to the laws which state that one cannot infringe upon the rights of others:

Fiére et sainte liberté! si ces pauvres gens pouvaient te connoître, s'ils savoient à quel prix on t'acquiert et te conserve, s'ils sentoient combien tes loix sont plus austères que n'est dur le joug des tyrans; leurs foibles ames, esclaves de passions qu'il faudroit étouffer, te craindroient plus cent fois que la servitude; ils te fueroient avec effroi comme un fardeau prêt à les écraser.²

What Rousseau is referring to here is moral liberty. It is the same concept Burlamaqui referred to when he said that liberty implies the use of reason, that it is different from license which is irrational. Liberty always implies self-control. Rousseau made clear that when passions are not controlled, a man is not free: "Je suis esclave par mes vices, et libre par mes remords; le sentiment de ma liberté ne s'efface en moi que quand je me déprave, et que j'empêche enfin la voix de l'âme de s'élever contre la loi du corps."³

1. (CGP) Oeuvres complètes, III, p. 974.

2. Ibid.

3. Emile, pp. 339-340.

This is the reason why the natural man cannot have the liberty of man in society. "Man in the state of nature, a mere creature of appetite, . . . is independent but he is not free. . . . Only as a rational creature, self-conscious and conscious of his relations with others, does man acquire the idea of freedom."¹ When man can rationally conceive of what is for his best good and the good of others, he can enjoy true liberty which does not impinge upon the rights of others. Those who disobey law, the wicked, cannot have the liberty enjoyed by the law-abiding: "Il ne sauroit y avoir de liberté parmi les méchants parce que si chacun fait sa volonté, elle contrariera la volonté publique ou celle de son voisin et le plus souvent toutes les deux, et s'il est contraint d'obéir à la volonté publique il ne fera jamais la sienne."² These are the exact sentiments of Burlamaqui.

Although Rousseau maintained that the general will must have unrestricted power to command obedience, he never proposed the sacrificing of individual liberty to group despotism. "Rousseau's end is always the individual and his liberty. It is true that the community has to play an essential part in his liberation; but the state or the

1. John Plamenatz, Man and Society (New York: McGraw Hill Book Company, Inc., 1963), I, p. 418.

2. (FP) Oeuvres complètes, III, p. 483.

community is never more than a means to an end."¹ Rousseau points out that the social pact was formed in the first place to ensure the liberty of each individual. To arbitrarily sacrifice one or several members of the group would be directly contrary to the purpose of the social contract. The laws enacted by the community have as their main purpose to guarantee the liberty of all. The liberty of each individual is sacred:

Si l'on entend qu'il soit permis au gouvernement de sacrifier un innocent au salut de la multitude, je tiens cette maxime pour une des plus exécrables que jamais la tyrannie ait inventée, la plus fausse qu'on puisse avancer, la plus directement opposée aux lois fondamentales de la société. Loin qu'un seul doive périr pour tous, tous ont engagé leurs biens et leurs vies à la défense de chacun d'eux, afin que la foiblesse particulière fût toujours protégée par la force publique, et chaque membre par tout l'état.²

It can be concluded that Rousseau's position on liberty and civil law is largely the same as that of Burlamaqui and many others of the seventeenth and eighteenth-century philosophers. His concept of the general will might at times suggest a severe restriction of personal liberty, but a consideration of the totality of his writings on the subject indicate that Rousseau was not an advocate of collectivist despotism or of totalitarianism. He

1. Cobban, op. cit., p. 8.

2. (DEP) Oeuvres complètes, III, pp. 256-257.

maintained, like Burlamaqui, that the state cannot deprive a man of his natural rights any more than a man himself can alienate his natural liberty.¹ It has been shown that Rousseau believed that God had created man a free agent: he would contradict himself by proposing a political system which robbed man of this free agency. Rousseau proclaimed liberty to be one of the most precious gifts God has given to man: it would be strange, indeed even hypocritical, to proclaim such a doctrine and then concoct a system which would enable the majority under the name of the general will to deprive man of this much lauded liberty. The present examination of Rousseau's political system will show that it does not contradict the author's ideas on liberty.

1. In fact, Rousseau is even more clear or emphatic in his stand on a man's liberty being inalienable than Burlamaqui, who on one occasion, influenced by Pufendorf, implies that liberty can be alienated like property--an assertion which is clearly in contradiction to his stand on the inalienability of liberty as presented in other passages of his writings.

CHAPTER IV

THE RIGHTS AND DUTIES OF MAN

The rights and duties of man devolving from his membership in the civil society are directly related to and based on the nature of man and the moral values inherently connected with this nature. There are certain inalienable rights associated with human existence that cannot be transgressed by civil law, and in fact is the very reason why the civil society was formed. The existence of these rights also implies duties which are imposed on man by civil as well as natural law. Such was the opinion of both Rousseau and Burlamaqui who first treated the nature of man and the origin of the civil society before they laid the foundation of their political systems. Rousseau wrote:

Or sans l'étude sérieuse de l'homme, de ses facultés naturelles, et de leurs développemens successifs, on ne viendra jamais à bout de faire ces distinctions, et de séparer dans l'actuelle constitution des choses, ce qu'a fait la volonté divine d'avec ce que l'art humain a prétendu faire. Les recherches Politiques et morales auxquelles donne lieu l'importante question que j'examine, sont donc utiles de toutes manières, et l'histoire hypothétique des gouvernemens, est pour l'homme une leçon instructive à tous égards.¹

1. (DI) Oeuvres complètes, III, p. 127.

Man's Relationship to Law

The first step in determining the rights and duties of man, in determining his relationship to law, is to define these rights and duties according to the law of nature. The procedure was common during the eighteenth century:

Nature and natural law--what magic these words held for the philosophical century! . . . Christian, deist, atheist--all acknowledge the authority of the book of nature; if they differ it is only as to the scope of its authority, as to whether it merely confirms or entirely supplants the authority of the old revelation. . . . The ideas, the customs, the institutions of men, if ever they are to attain perfection, must obviously be in accord with those laws which "nature reveals at all times, to all men."¹

Another critic has written: "The function of traditional Natural Law was no less than to provide the original and fundamental premise from which the central tradition of European values was derived."² Rousseau and Burlamaqui were greatly influenced by this tradition.

Natural Law

Burlamaqui divided law into two major categories--divine and human law. Human law is the positive law which originates with the sovereign of a civil society. Divine law is either natural or positive. Positive divine law is the revealed law which God gives to a particular people

1. Becker, The Heavenly City, pp. 51-53.

2. Lester G. Crocker, Nature and Culture; Ethical Thought in the French Enlightenment (Baltimore: The Johns Hopkins Press, 1963), p. 64.

such as the Jews in Biblical times. It obligates only those people to whom it is given, not mankind in general.

Natural law is distinguished from revealed law in that it is based upon the general constitution of human nature, and is revealed to man by natural means: "La loi Naturelle est celle qui a une liaison si nécessaire avec la nature de l'homme, que l'on peut la connaître par les seules lumières de la raison. La loi révélée au contraire est celle qui ne peut être connue que par une révélation particulière de Dieu."¹ Natural law is distinguished from positive law by its universal application: "Les Loix Naturelles sont immuables, et ... elles n'admettent aucune dispense. C'est encore là un caractère propre de ces Loix, qui les distingue de toute Loi positive, soit Divine soit Humaine."²

One aspect of Burlamaqui's concept of natural law which distinguishes it from that of many other seventeenth and eighteenth-century natural law philosophers is the role it assigns to Deity as the author of natural law.³ God is

1. Elémens, p. 18.

2. Droit naturel, p. 215.

3. Crocker, referring to the historical development of natural law thought, states that after Grotius (Grotius said that natural law would exist even if God did not exist) there was a change in this thought: "Natural Law ceased to be a participation in Eternal Law and God became merely its guarantor." (Nature and Culture, p. 11.) Crocker cites D'Entrèves to bolster this opinion: "'What Grotius had set forth as a hypothesis has become a thesis. The self-evidence of natural law has made the existence of God perfectly superfluous.'" (Ibid.)

an integral part of his notion of natural law. It is for this reason that Burlamaqui felt it first necessary to establish the existence of God before developing his ideas on natural law. Although he affirmed that natural law is revealed by reason alone, he never placed God outside his system of natural law as many did. In fact, he singled out Pufendorf for having excluded Deity too much from his works on natural law: "Pufendorf lui-même n'y insiste guère. Cet Auteur, sans exclure absolument de cette Science, la considération d'une vie à-venir, semble pourtant renfermer le Droit Naturel dans les formes de la vie présente, comme tendant uniquement à rendre l'homme sociable."¹

Burlamaqui defined natural law as follows: "L'on entend par Loi Naturelle, une Loi que Dieu impose à tous les hommes, et qu'ils peuvent découvrir et connoître par les seules lumières de leur Raison, en considérant avec attention leur nature et leur état."² Natural law, although discovered by reason, exists independent of man's

1. Droit naturel, pp. 349-350. Hazard concurs with this evaluation by Burlamaqui: "Pufendorf ne nie pas la puissance divine, mais il la relégue dans un autre plan; il y a le plan de la raison pure et celui de la révélation. ... La théologie concerne le ciel, la raison naturelle concerne la terre; c'est la terre seule que Pufendorf se plaît à regarder: le ciel lui paraît trop lointain." (La Crise de la Conscience Européenne, II, pp. 55-56.)

2. Droit naturel, p. 142.

reason.¹ Reason only reveals natural law; it "is a guide or discoverer, but not a creator."² God's supreme will is the cause or author of natural law: "Il est hors de doute, (et tout le monde en convient) que c'est la Volonté de l'Etre Suprême qui est la cause efficiente des Lois de la Nature, et la source de l'obligation qu'elles produisent."³ Burlamaqui does not suppose that natural law is a relative matter, that it exists according to the manner in which it is conceived by the reasoning faculties of man. Natural laws are absolutes: they are the absolute laws that God gives to man for his perfection and development. "There is an objective right and wrong in the very nature of things and their relationships, divorced from general utility, self-interest, or emotional preference."⁴

Burlamaqui denies that natural laws are an arbitrary creation of God. Since they are created for the perfection and happiness of man, they must be in harmony with human nature as God created it:

1. This concept, according to Maritain, is Thomistic: "'Law is a measure and a rule,' says Saint Thomas. . . . The Natural Law is known by human reason, but that human reason, in its rational exercise, has no part in its establishment. The divine reason alone is the author of Natural Law." (Jacques Maritain, "Natural Law and Moral Law," in Moral Principles of Action, ed. Ruth Nanda Anshen [New York: Harper and Brothers Publishers, 1952], pp. 65-66.)

2. Crocker, Nature and Culture, p. 5.

3. Droit Naturel, p. 175.

4. Crocker, Nature and Culture, p. 3.

Etant lui-même l'auteur de notre constitution, il ne peut que prescrire ou défendre les choses qui ont une convenance ou une disconvenance nécessaire avec cette même constitution; et par conséquent il ne sauroit rien changer aux Loix Naturelles, ni en dispenser jamais. C'est en lui une glorieuse nécessité, que de ne pouvoir se démentir lui-même.¹

Since natural law is revealed by reason and since, according to Burlamaqui, it must be universally known and obligatory, there arises a problem. Burlamaqui admits that not all men make use of their reason. How then can the natural law obligate everyone? Some natural law philosophers believe that it does not and that natural law is not universal: "Some of the greatest natural right teachers have argued that, precisely if natural right is rational, its discovery presupposes the cultivation of reason, and therefore natural right will not be known universally."² Burlamaqui disagrees, but in his defense of the principle of universality he is led to tacitly admit that reason alone does not universally make known the laws of nature or make them obligatory for everyone. Such an admission contradicts, if not in substance, at least in spirit the numerous passages in his works which assert that natural law is revealed by reason alone and which imply that the universal obligation of natural law is produced by reason.

1. Droit naturel, p. 215.

2. Leo Straus, Natural Right and History (Chicago: The University of Chicago Press, 1953), p. 9.

Burlamaqui defends the universality of natural laws by establishing, first of all that they are clear and easily understood: "Les Loix Naturelles étant obligatoires pour tous les hommes, il faut que leurs premiers principes soient à la portée de tout le monde, et qu'avec le Sens-Commun chacun puisse s'en instruire aisément."¹ Despite the fact that natural laws are easily understood, Burlamaqui does not maintain that they are universally understood by reason. Some people, he asserts, cannot make use of reason in a manner to distinguish natural laws, despite the simplicity of these laws. According to Burlamaqui, there are three categories of men to whom the natural law is made known by three different means:

Tous les hommes ne sont pas capables par eux-mêmes de développer méthodiquement les principes des Loix Naturelles, et les conséquences, qui en résultent. Il suffit que les génies médiocres puissent du moins comprendre ces principes, quand ils leur sont expliqués, et sentir la vérité et la nécessité des devoirs qui en découlent, en les comparant avec la constitution de leur propre nature. Que s'il y a des esprits d'un ordre encore inférieur, ils ne peuvent guère se conduire que par les impressions de l'exemple, de la coutume, de l'autorité, ou de quelque utilité présente et sensible. Quoi qu'il en soit et tout bien compté, la Loi Naturelle est suffisamment notifiée, pour que l'on puisse dire qu'aucun homme en âge de discrétion et dans son bon sens, ne sauroit alléguer pour excuse valable une ignorance invincible à cet égard.²

1. Droit naturel, p. 176.

2. Ibid., pp. 206-207.

According to this explanation, it can be deduced that there are men who have developed their reason in a manner that they can methodically discern the principles of natural law. To these men fall the task of explaining the laws of nature to others. Of this group it can be said that natural law is revealed and made obligatory by reason alone. The second group, the "génies médiocres," have the natural law revealed to them by those of the first group, the natural law philosophers. It can be said of this second group that they too understand the simple principles of natural law by reason and by reason are obligated to obey them. The third group, unable to reason, as Burlamaqui implies here and makes plain elsewhere, receive a knowledge of natural laws only by customs, authority (deriving from civil law), example and moral sense. Of this group it cannot be said that natural law is either revealed or made obligatory by reason, despite the clarity and simplicity of natural law.

This is another reason for the necessity of civil law. The civil law helps the natural law to be known, especially among the ignorant and uneducated. The civil law also fortifies the natural law by establishing punishments for the infractions of the natural law, assuming, of course, the civil law is in harmony with natural law. If it is contrary to natural law, the civil law is not obligatory. Thus Burlamaqui can maintain that natural law is universally

obligatory, that it is made known to all. It must be recognized, however, that according to his system natural law is of lesser force among those who have little use of their reason: they must rely upon more imperfect recognition of natural law; they must rely upon authority, custom, and moral instinct. Those who have cultivated their reason are able to discern more clearly and perfectly the laws of nature and thus are more strongly obligated to obey them.

Many scholars have contended that Rousseau rejected the idea of natural law.¹ In an article on Rousseau and natural law, Haymann very convincingly demonstrated that this opinion is erroneous by showing that the author's works evidence acceptance of the natural law concept. He systematically refuted the opinions of Vaughan, Cobban (in the first edition of his book) and Gough who took this position.²

1. See, for example, H. V. S. Ogden, "The Antithesis of Nature and Art, and Rousseau's Rejection of the Theory of Natural Rights," American Political Science Review, XXXII (1938), 643-654.

2. Franz Haymann, "La Loi naturelle dans la Philosophie politique de J.-J. Rousseau," Annales de la Société Jean-Jacques Rousseau, XXX (1943-1945), 65-109. Haymann shows that Rousseau evidences acceptance of natural law in such works as the Lettres de la Montagne (Ibid., p. 66), the Contrat social (Ibid., p. 70), the Projet de Constitution pour la Corse where Rousseau praises Corsica for being under the natural law (Ibid.), in the Considérations sur le Gouvernement de Pologne where Rousseau refers to the natural law as a holy law (Ibid., p. 104), and in Rousseau Juge de Jean-Jacques where Rousseau admonishes respect for natural law (Ibid.).

The opinion that Rousseau rejected natural law is largely based on his remarks on natural law in the second chapter of the first book of the Geneva Manuscript entitled "De la Société Générale du Genre Humain." Many scholars believe that this chapter of the first version of the Contrat social is a refutation of the article "Droit naturel" which appeared in volume five of the Encyclopédie September, 1755, and was probably written by Diderot.¹ An examination of this chapter will indicate that much of Rousseau's criticism in it is of the same nature as his criticism of reason, and that his objections do not constitute a rejection of natural law in general, but rather rejection of a natural law based upon reason alone.

Denying that a law of nature, the product of reason, was known by man in the state of nature, Rousseau argued: "Les notions de la Loi naturelle, qu'il faudroit plustot appeller la loi de raison, ne commencent à se développer que quand le développement antérieur des passions rend impuissans tous ses preceptes."² Both reason and a natural law discernible by reason alone are a later development of

1. This is the opinion of Robert Derathé. Hubert, on the other hand, believes that the article was written by Boucher d'Argis and that it mainly contains the ideas of Burlamaqui. (René Hubert, Rousseau et l'Encyclopédie; Essai sur la formation des idées politiques de Rousseau 1742-1756 [Paris: J. Gamber, Editeur, 1928], p. 28.)

2. (CS 1st V) Oeuvres complètes, III, p. 284.

man: "Les saines idées du droit naturel et de la fraternité commune de tous les hommes se sont répandues assés tard."¹

Another objection put forth by Rousseau to a natural law revealed by reason alone (that is, the natural law of the natural law philosophers), is that it is not really a natural law in the sense of being a universal system of justice and truth. The laws called natural by some legal philosophers are not universal and just but relative and often unjust: "The most serious critique, from a moral point of view, which Rousseau levels at the modern natural law theorists is that their theories are really concocted out of a consideration of what is expedient to society."² In the Discours sur l'Inégalité Rousseau also critized the natural law philosophers for having erected a system so complicated that only the most gifted by their powers of reasoning can understand it. Such a system could not apply to the natural state where man does not have use of his reason, or to a vast number of mankind who do not have the reasoning abilities to comprehend such laws.

Although rejecting the reasoned natural law of his contemporaries, Rousseau nevertheless asserted that natural law does exist. He stated that the social contract must not

1. Ibid., p. 287.

2. Sanford A. Lakoff, Equality in Political Philosophy (Cambridge: Harvard University Press, 1964), p. 106.

be contrary to natural law: "Il n'est pas plus permis d'enfreindre les Loix naturelles par le Contrat Social, qu'il n'est permis d'enfreindre les Loix positives par les Contrats des particuliers."¹ He said of the Contrat social, the work which some have inferred rejects the notion of natural law: "Mon livre ... ne peut être considéré que dans le nombre de ceux qui traitent du droit naturel et politique."² He admonished respect for natural law as a foundation of virtue, indicating that one of the great lessons the public has need of learning is to "respecter en tout et toujours le droit naturel, et à sentir que toute vertu qui se fonde sur une violation de ce droit est une vertu fausse qui couvre infailliblement quelque iniquité."³

Rousseau believed like Burlamaqui that natural law comprises universal, absolute principles of justice and goodness. It has been indicated in chapter two of this study that Rousseau believed in a life hereafter where punishment would be meted out to those who violated God's absolute laws of justice which are binding upon all men everywhere. It is these principles which comprise the laws of nature: "Les loix éternelles de la nature et de l'ordre existent. Elle tiennent lieu de loi positive au sage;

1. (LDM) Oeuvres complètes, III, p. 807.

2. Ibid., p. 812.

3. Rousseau Juge de Jean-Jacques, p. 313.

elles sont écrites au fond de son coeur par la conscience et par la raison."¹ These laws are not relative or arbitrary but universal and just, for they emanate from God, whom Rousseau always associates with justice and order. His criticism of the legal philosophers who had founded systems of natural law upon their reason alone was directed toward this very aspect of their laws--they were often arbitrary and unjust, not based upon principles of absolute justice. The laws of eternal truth are in direct contrast to complicated metaphysical systems: "Ce sont les sophismes d'une subtile métaphysique, qui ne sauraient balancer les vérités éternelles admises de tous les temps, par tous les sages, reconnues par toutes les nations et gravées dans le coeur humain en caractères ineffaçables."² Rousseau agreed with Burlamaqui that natural laws are simple and easy to understand, the antithesis of complicated, unjust legal systems.

Rousseau's concept of natural law and the discernment of this law is closely related to his notion of reason and conscience. Both reason and conscience discern the natural law, but conscience is superior to reason in this discernment: "Par la raison seule, indépendamment de la conscience, on ne peut établir aucune loi naturelle; ... tout le droit de la nature n'est qu'une chimère, s'il n'est fondé

1. Emile, p. 605.

2. Rêveries, p. 38.

sur un besoin naturel au coeur humain."¹ It is reason which reveals knowledge; it is conscience which verifies whether this knowledge be natural law or absolute truth, or whether it be falsehood. Thus the principles of natural law are founded not upon reason but upon the heart, on the principle of love: "Il n'est pas vrai que les préceptes de la loi naturelle soient fondés sur la raison seule, ils ont une base plus solide et plus sûre. L'amour des hommes dérivé de l'amour de soi est le principe de la justice humaine."²

Viewing mankind in its historical development from the state of nature, Rousseau sees two general kinds of natural law--one that applies to the primitive state of nature, and the other which applies to the civil state. The laws themselves, of course, are the same in both states--eternal laws of justice and truth emanating from God--but the manner of their discernment or comprehension by man in each of these states is different. Reason plays no part in the discernment of natural law in the primitive natural state. Self-love and pity reveal to the natural man the rudimentary "règles du droit naturel; règles que la raison est ensuite forcée de rétablir sur d'autres fondemens, quand

1. Emile, p. 278.

2. Ibid., p. 279.

par ses développemens successifs elle est venue à bout d'étouffer la Nature."¹ Man in the civil society discovers natural law by reason as well as by conscience, but it is conscience or the heart which knows the natural law with more certainty. Man in the natural state senses the natural law more than he comprehends it. The principles of natural law are in embryonic form within the primitive natural man in the same manner that his other faculties of comprehension lie dormant within him and are subsequently developed in the social state: "En passant de l'état de nature à l'état civil, le droit naturel subit la même métamorphose que l'homme auquel il s'applique. Dans l'état de nature, il n'était qu'instinct et bonté, dans l'état civil il devient justice et raison."²

Rousseau also believed, like Burlamaqui, that civil law is needed to fortify natural law. If not the strong will oppress the weak: "A considérer humainement les choses, faute de sanction naturelle les loix de la justice sont vaines parmi les hommes; elles ne font que le bien du méchant et le mal du juste, quand celui-ci les observe avec tout le monde sans que personne les observe avec lui."³ The purpose of the formation of the civil society, of the

1. (DI) Oeuvres complètes, III, p. 126.

2. Derathé, Rousseau et la Science politique, p. 168.

3. (CS) Oeuvres complètes, III, p. 378.

social contract, is to ensure that each man enjoys his natural rights: "Tout le problème de l'organisation sociale, c'est précisément de trouver le meilleur moyen d'assurer le droit naturel, la liberté naturelle des hommes."¹

The principal area of disagreement in Rousseau's and Burlamaqui's ideas on natural law lies in the way they conceive that this law is revealed. Rousseau rejects a natural law revealed by reason alone, insisting that it must also be founded on or discerned by conscience. Burlamaqui adheres to the traditional notion of natural law based on reason, and yet he also affirms that natural law is discerned by moral instinct as well as by reason, albeit reason is far superior to moral instinct in this discernment. By asserting that moral instinct also is necessary for the universal discernment of natural law, Burlamaqui takes a position not altogether unrelated to that taken by Rousseau. His position is mid-way between that of Rousseau and the traditional natural law concept. It has been said that Burlamaqui put little stock in his concept of moral instinct, that he passed quickly over the concept and returned to reason as the foundation of his system. It is true that his system is founded on reason, but moral instinct is an important part of it because without this concept his maintaining the principle of natural law as universally obligatory would lack a solid foundation.

1. Henri Sée, Les Idées politiques en France au XVIII^e Siècle (Paris: Librairie Hachette, 1920), p. 114.

Obligation

There are some major differences in their ideas on obligation, but there is one central point of agreement in their respective concepts which runs counter to so much of the other accepted political opinion on obligation that there seems to be a strong likelihood that Rousseau was influenced by Burlamaqui. The point in question pertains to what Burlamaqui referred to as inner obligation. De Félice commenting on Burlamaqui's concept indicated that it was radically different from that of the major authorities of natural law and that "la distinction qu'il fait entre l'obligation interne et l'obligation externe ... n'a aucun fondement dans l'origine des choses."¹ He disagreed with Burlamaqui and was of the opinion that the distinction made by the latter was the source of much error to be found in his works: "Il est fort aisé de relever toutes les contradictions où l'auteur tombe presque dans tout son ouvrage à cause de ce sentiment extraordinaire sur le fondement de l'obligation."²

The unique feature of Burlamaqui's concept of obligation is that he places more emphasis on the moral aspect of obligation than on the political or physical. This emphasis

1. Burlamaqui, Droit de la nature et des gens, I, p. 159.

2. Ibid., p. 373.

is typical of his political thought which, like that of Rousseau, is permeated with a concern for moral values.

It was this emphasis on the moral aspect of obligation which led him to distinguish two kinds of obligation--internal and external.

Burlamaqui believed that when one knows the truth of a principle, one must acknowledge it or give assent to it. The recognition of a principle by reason creates a moral necessity to comply with the principle. This is the beginning of obligation. Obligation, says Burlamaqui, signifies binding; a man obligated is a man who is morally bound by reason. "L'on peut donc définir l'obligation considérée en général et dans sa première origine, une restriction de la Liberté Naturelle, produite par la Raison."¹

There is a close analogy in Burlamaqui's thinking between right and obligation: "Le droit et l'obligation sont donc deux idées relatives; l'une suppose nécessairement l'autre, et l'on ne sauroit concevoir de droit sans aucune obligation qui y réponde."² Right, according to Burlamaqui, is the power man has to use his liberty and natural forces as reason approves or permits. It is a moral quality and is distinguished from power, a physical quality; right always implies the proper use of power. It is in this

1. Droit naturel, p. 71.

2. Elémens, p. 13.

respect that right is necessarily connected with obligation. A right carries with it the obligation to use correctly the power it entails. On the other hand, Burlamaqui distinguishes right from obligation by indicating that the latter term always implies use of the powers of discernment. A child has certain rights to which there is no obligation attached, whereas an adult able to reason is necessarily obligated by these rights.¹

Burlamaqui's distinction between right and power, the one being moral the other physical, is the same that he makes when he explicitly distinguishes between internal and external obligation. Internal obligation is the moral recognition of the validity and justness of the law. "Pour l'Obligation externe, ce sera celle qui vient de la Volonté de quelque Etre, dont on se reconnoît dépendant, et qui commande ou défend certaines choses, sous la menace de quelque peine."² Internal obligation is produced by reason and comes from within: "J'entends par Obligation interne celle qui est uniquement produite par notre propre Raison, considérée comme la Règle primitive de notre conduite, et en conséquence de ce qu'une action a en elle-même de bon ou de

1. Droit naturel, p. 82.

2. Ibid., p. 76. De Félice says of Burlamaqui's idea of external obligation: "Burlamaqui confond ici l'obligation avec la sanction." (Burlamaqui, Droit de la nature et des gens, I, p. 152.)

mauvais."¹ He adds that these two kinds of obligation are not opposed but reenforce each other. External obligation gives greater force to internal obligation, and external obligation in turn derives its force from internal obligation: "C'est de l'accord et du concours de ces deux obligations, que résulte le plus haut degré de nécessité morale.

... C'est par là que se forme l'obligation la plus parfaite."²

It is evident that Burlamaqui uses his unusual concept of inner obligation to establish a standard of obligation which will apply to all forms of government, that will nullify supposed obligation imposed by unjust authority. He states that he disagrees with the jurists like Barbeyrac who say that the will of a superior alone is sufficient to produce obligation, adding that the will of the superior produces obligation only if reason approves that will. In regard to natural laws, since God is their author and they are inherently just, once man has a knowledge of them, they become obligatory. However, if the law emanating from a superior is not just, reason need not assent to it and it is therefore not obligatory.

He said of obligation produced only by force: "Je dis, que ceux qui fondent le droit de prescrire des Loix,

1. Droit naturel, p. 76.

2. Ibid.

sur la seule supériorité de puissance, ou sur un Pouvoir auquel il est impossible de résister, établissent un principe insuffisant, et qui même en le prenant à la rigueur, se trouvera faux."¹ Unjust authority wielded over a people does not produce obligation: "Nous souffrons malgré nous les effets d'une force supérieure; et en nous y soumettant extérieurement, nous soulevons intérieurement contre elle, par un sentiment naturel."² He adds that such force instead of obligating one to obey the superior power, always leaves one the right to use any means possible to resist that force. There is a difference between obligation and constraint. Constraint is exterior, obligation comes from within: "Il n'est point question ici de force ou de contrainte: il ne s'agit que d'un lien moral, qui de quelque manière qu'on le considère, est toujours l'ouvrage de la Raison."³

Burlamaqui even affirmed that reason alone, independent of the law, can impose a degree of obligation. Nevertheless, that which reason approves which is not law is more properly called counsel than obligation. The obligation produced by law and by counsel is different: "L'obligation que produit le conseil est une obligation purement

1. Ibid., p. 96.

2. Ibid., p. 98.

3. Ibid., p. 241.

interne; celle de la Loi est interne et externe tout à la fois."¹ It is the latter kind of obligation which Burlamaqui calls perfect obligation.

Those who have criticized Burlamaqui for confusing the foundation of obligation with his distinction between internal and external obligation have failed to see the real intent of the writer. De Félice said that he confuses internal obligation with recognition of obligation which comes from reason and external obligation with the sanction of law. In reality Burlamaqui does neither, but he moves away from the conventional definition of obligation consisting of the will of a superior which is able to command obedience, and approaches making it solely the internal approbation of law by right reason. Instead of making obligation the result of power or force, he gives it a moral foundation. Instead of confounding obligation with the means whereby law and its obligation are revealed, Burlamaqui is moving in the direction of saying that reason or the inner assent to law is in fact what constitutes obligation. It is true that he adds that there must be a law which produces external obligation to establish what he calls a perfect obligation, but the major factor in his concept of obligation is inner obligation: "Toute la force de l'obligation externe

1. Ibid., p. 91.

dépend en dernier ressort, de l'obligation interne."¹ His definition of obligation also establishes the fact that inner obligation, which is produced by reason alone, is the foundation of his concept: "L'obligation ... n'est autre chose ... qu'une restriction de la Liberté naturelle, produite par la Raison; entant que la Raison ne permet pas que l'on s'oppose à ceux qui usent de leur Droit."²

As has undoubtedly been noticed, the one thing that Burlamaqui omits in his discussion of the foundation of obligation is his concept of moral instinct by which he established the universality of natural law. He makes reason the foundation of his concept of obligation. If this be the case and the cultivation of reason is afforded to only a minority, one might conclude that natural law is not universally obligatory.³ Burlamaqui, in fact, does admit that obligation is more or less strong according to the comprehension of the law in question. Obligation which is strongest of course is that which is derived from reason. It must be understood from his discussion of moral instinct that

1. Ibid., p. 76.

2. Ibid., p. 81.

3. De Félice pointed out this weakness in his system: "Si donc ce que l'auteur appelle obligation interne, était le vrai fondement de l'obligation, il faudrait dire ... que les lois de la nature ne sont pas assez manifestées pour obliger tous les hommes à s'y conformer." (Burlamaqui, Droit de la nature et des gens, I, pp. 160-161.)

this instinct produces obligation, albeit obligation which is imperfect, that has not the force of obligation produced by reason. He probably did not include moral instinct in his discussion of the foundation of obligation because he was dealing with an ideal or an absolute, as is the case with his whole system. Right reason is the very foundation of that absolute. He did not leave the masses without a knowledge of natural law or an obligation to follow law as De Félice implies. The inner obligation to which they are subject derives from authority and moral instinct. Nevertheless, by treating only reason as the foundation of obligation, it must be admitted that Burlamaqui's system is weakened.

Rousseau's consideration of obligation begins from the same point as that of Burlamaqui. Rousseau also is mainly concerned with the moral implications of obligation. He too is careful to treat the foundation of sovereignty from a viewpoint which will exclude obligation deriving from force or arbitrary power. He says of the latter: "La force est une puissance phisique; je ne vois point quelle moralité peut résulter de ses effets."¹ He indicates that when one is forced to obey another without giving

1. (CS) Oeuvres complètes, III, p. 354. Compare Burlamaqui's distinction of power and right: "Le simple pouvoir est une qualité physique. ... Le Droit est une qualité morale." (Droit naturel, p. 78.)

one's consent to be governed, there is no true obligation. In fact, like Burlamaqui, he affirms that one has a perfect right to resist and overthrow that force. Referring to the usurpation of power by Nimrod he writes: "Cette première force venant à cesser, la force qui lui succède oblige à son tour, et détruit l'obligation de l'autre, en sorte qu'on ne soit obligé d'obéir qu'autant qu'on y est forcé, et qu'on en soit dispensé sitôt qu'on peut faire résistance."¹ Force, says Rousseau, does not establish right, since ceding to force is an act of necessity, not of will.

Rousseau's notion of the most forceful kind of obligation is the same as that of Burlamaqui: "L'autorité la plus absolue est celle qui pénètre jusqu'à l'intérieur de l'homme, et ne s'exerce pas moins sur la volonté que sur les actions."² When people give free consent to the laws which govern them, the strongest kind of obligation is produced: "L'histoire nous montre en mille endroits que l'autorité qu'il [the people] accorde à ceux qu'il aime et dont il est aimé, est cent fois plus absolue que toute la tyrannie des usurpateurs."³

Speaking of natural law, Rousseau asserts like Burlamaqui, that it has to be known to be obligatory and

1. Emile, p. 586.

2. (DEP) Oeuvres complètes, III, p. 251.

3. Ibid., p. 254.

that the person to whom it is revealed has to accept it of his own will: "Tout ce que nous pouvons voir très clairement au sujet de cette Loi, c'est que ... pour qu'elle soit loi il faut que la volonté de celui qu'elle oblige puisse s'y soumettre avec connoissance."¹

Rousseau erects a political system entirely derived from inner obligation which extends to the whole community, making the particular will of the individual unite with other particular wills to become a general will. By doing so, Rousseau moves the concept of Burlamaqui's inner obligation completely away from the traditional notion of obligation to make it a new and novel concept. He proposes that obligation be derived from the free consent of a person submitting to a social pact: "Quel fondement plus sûr peut avoir l'obligation parmi les hommes que le libre engagement de celui qui s'oblige?"² If a person freely consents to obey the laws of the society he helps to form, he obeys by his own volition; he is obligating himself: "There is a difference between being made to do what other people have decided you shall do and being obliged to do what you have committed yourself to doing. By taking part, on equal terms with other people, in making a decision, you oblige yourself

1. (DI) Oeuvres complètes, III, p. 125.

2. (LDM) Oeuvres complètes, III, pp. 806-807.

to accept it."¹ Rousseau proposes establishing this kind of obligation by means of a social contract whereby each person "s'enage envers tous, d'où s'ensuit l'engagement réciproque de tous envers chacun, qui est l'objet immédiat de l'union."² Each man freely consents to obey the laws of the community which he himself has helped to enact. "Instead of the sovereign king there is the supreme people. Man the individual, in lieu of being subject to a rule external to himself, is now seen as a self-governing and self-controlled person. . . . This political society exists in and through the will of every citizen in the community."³

The means whereby obligation is established within the social contract is the general will. It is the organ by which the individual interest is transferred to the community interest, but in such a manner that it remains the will of the individual. The obligation deriving from the general will is not external but internal: "L'obligation n'implique nullement qu'il existe une autorité extérieure et supérieure aux individus, autorité qui leur impose le respect. Elle a son fondement dans l'individu lui-même, dans l'engagement qu'il a pris de se soumettre."⁴

1. Plamenatz, Man and Society, I, p. 402.

2. (LDM) Oeuvres complètes, III, p. 807.

3. Hendel, Jean-Jacques Rousseau Moraliste, I, p. 155.

4. Derathé, Rousseau et la Science politique, p. 239.

The General Will

Rousseau's concept of the general will as the foundation of civil law is a comparatively original idea which distinguishes his political thought from that of his contemporaries. Nevertheless, there are elements of his concept which are common to the political thought of his predecessors,¹ among others Burlamaqui. It is the application of the basic elements of his concept uniting into the dynamic concept of an absolute, sovereign, general will that makes of his idea a new foundation for legal authority.

Burlamaqui indicates that the good of the individual is to be found in the common good: "La Providence a établi les choses de manière que pour l'ordinaire le bien des particuliers de la société se trouve dans le bien commun."² This being the case, the purpose of the civil union is to unite the particular interests of the members of society to obtain the common good: "La société, c'est l'union de plusieurs personnes pour une certaine fin, pour un avantage

1. "Speaking of precedents, we may well note here that Rousseau had a striking and untimely forerunner in a medieval writer. Marsilius of Padua, a fourteenth century Italian, had stated in so many words a theory of the general will in his Defensor Pacis (1324). According to him, not only are laws the expression of the will of the people, but it is because they are the expression of the will of the people that laws are good and just." (A. P. D'Entrèves, Natural Law [London: Hutchinson's University Library, 1951], p. 75.)

2. Elémens, p. 75.

commun. L'union de plusieurs personnes est le concours de leurs volontés."¹ The only way this union can be accomplished is by a voluntary submission of particular interest to the common interest by means of a social pact:

Cette union des volontés dans une seule et même personne, ne sçauroit se faire de manière que la diversité naturelle d'inclinations et de sentimens, soit actuellement détruite; mais cela se fait par un engagement où chacun entre, de soumettre sa volonté particulière, à la volonté d'une seule personne ou d'une assemblée; ensorte que toutes les resolutions de cette personne ou de cette assemblée au sujet des choses qui concernent la sureté, ou l'utilité publique, soient regardées comme la volonté positive de tous en général, et de chacun en particulier.²

It is the union of several people in one body with one will which distinguishes the state from a multitude. A multitude is a conglomeration of particular interests, "au lieu que l'Etat est un Corps, une Societé animée par une seule ame, qui en dirige tous les mouvemens, et qui en fait agir tous les membres d'une manière constante et uniforme, et relativement à un seul et même but, sçavoir l'utilité commune."³ It is this union which constitutes the supreme will: "Il n'y a qu'une volonté Suprême. Ce Souverain, c'est

1. Ibid., p. 13.

2. Droit politique, pp. 19-20.

3. Ibid., p. 21. Burlamaqui notes, however, that this union of will does not destroy the particular will of the individual: "La réunion des volontés et des forces de chaque membre de la Société dans la personne du Souverain, ne détruit ni la volonté ni les forces naturelles de chaque Particulier." (Ibid.)

le Corps même de tous les Citoyens, formé par la réunion de tous les Ordres de l'Etat; et cette volonté Suprême, c'est la Loi elle-même par laquelle le Corps entier de la Nation fait connoître sa volonté."¹ The wording of this passage is very similar to that of Rousseau as he describes the sovereignty of the general will, and might possibly have influenced him in the formulation of his singular concept. There is one principal difference, however, in what Burlamaqui implies in this passage and what Rousseau says: when the former says that the only supreme will lies in the body of all the citizens formed by the union of all the orders of the state, he is referring to the representatives of the people. When Rousseau says that the supreme power lies with the body of the people, he means all the people of the state united in a general will, not merely the representatives of the people or the different orders of government. According to Burlamaqui, the sovereign or the chosen leaders of the people direct the general will. According to Rousseau, the general will deriving from the general assembly of the people directs or commands the heads of government.

Rousseau's considerations on the general will begin from the same point as those of Burlamaqui; namely, from the assumption that the common good is preferable to the good of the individual. The general will is always right because it

1. Ibid., p. 60.

always prefers the good of all: "Pourquoi la volonté générale est elle toujours droite, et pourquoi tous veulent-ils constamment le bonheur de chacun d'eux, si ce n'est parce qu'il n'y a personne qui ne s'approprie ce mot chacun, et qui ne songe à lui-même en votant pour tous?"¹ When the general will becomes particular, "elle perd sa rectitude naturelle."²

The particular will that he opposes to the general will need not be that of only one individual. It can be the opposition of several individuals to the general will by way of a faction, or it can even entail a majority. Rousseau thus distinguishes the general will from the volonté de tous: "Il y a souvent bien de la différence entre la volonté de tous et la volonté générale; celle-ci ne regarde qu'à l'intérêt commun, l'autre regarde à l'intérêt privé, et n'est qu'une somme de volontés particulières."³

To put it another way, Rousseau's concept of the general will implies unanimous approval of those things which concern the whole community, whereas the volonté de tous does not imply this unanimity. It is true that Rousseau states, with due regard to practicality, that all decisions made by the people assembled in a legislative body to

1. (CS) Oeuvres complètes, III, p. 373.

2. Ibid.

3. Ibid., p. 371.

express the general will need not be unanimous: "Pour qu'une volonté soit générale il n'est pas toujours nécessaire qu'elle soit unanime, mais il est nécessaire que toutes les voix soient comptées; toute exclusion formelle rompt la généralité."¹ Nevertheless, the ideal implied by the general will is that it be the unanimous will of all. "The dominance of the general will in the assemblies of the people is an approach to unanimity."² The volonté de tous, unless it becomes the volonté générale, implies that there is a division of the will of the body toward different particular interests. Even though the volonté de tous concerns the will of each member of the body, it cannot be the general will until it expresses (or comes as near as possible) the unanimous will of the community on that which is for the good of all and subsequently for each individual as well: "Il s'agit donc bien, dans le principe, d'une volonté unanime, propre à chaque citoyen et commune à tous, autrement dit de l'accord de tous les membres de l'Etat sur les problèmes qui les concernent tous."³

Rousseau's notion of the general will is similar to the natural law concept that there are absolute laws,

1. Ibid., p. 369.

2. Thomas Hill Green, Lectures on the Principles of Political Obligation (London: Spottiswoode, Ballantyne and Co., Ltd., 1960), p. 88.

3. Derathé, Rousseau et la Science politique, p. 235.

inherent in the nature of man, which when followed by man in the civil society provide for his happiness and development. However, instead of using reason (that is, the reason of political leaders in whom Rousseau saw nothing but arbitrary thinking) as the infallible revealer of these laws, Rousseau proposed to have universal principles revealed from a universal source--the general will. What better way is there to determine the absolute laws of justice applicable to all men than to have all men agree what these laws are as they apply to themselves? This in essence is the general will, except that instead of applying to all societies of men, as does natural law, it applies to all the men in a given society. It applies the principle of universality to a particular society by making the general will of all the members of that society the absolute standard of justice, and yet there is not arbitrariness implied in the concept. The general will is always right. Even when the universal principles of justice are applied on this smaller scale, within the civil society, they are always right as enunciated by the general will.

Although Rousseau's concept of the general will might be called a practical application of the idea of universal right and justice, it is evident also that the notion implies an ideal, in the same way that Burlamaqui's concept of reason implies an ideal. Right reason, according to Burlamaqui, is infallible; it is the sure revealer to man of

natural law. Now it is evident that man's powers of reasoning are not infallible. Thus Burlamaqui's concept of the infallibility of right reason represents an ideal as well as a practical approach to the discovery of truth. By the same token, all the members of a society when unanimously expressing the common will of that society on an issue of common interest, are not infallible either. When Rousseau says that the general will is always right, he is expressing "an ideal: it is what the will of the community would be if it were free from distortion by particular interests, and perfect in its enlightenment and goodness."¹ He uses his concept to establish the best standard of justice in the civil society in the same manner that he uses the concept of conscience to establish the standards of truth and virtue in the realm of morals, even though conscience is no more infallible than the general will.

Nevertheless, Rousseau's concept of the general will is not totally idealistic. He insisted that the people must be enlightened if the general will is to retain its rectitude: "Comment voudroit-on qu'une multitude aveugle qui souvent ne sait ce qu'elle veut, parce qu'elle sait rarement ce qui lui est bon, put former et exécuter d'elle même une entreprise aussi difficile qu'un système de Legislation."²

1. Cobban, op. cit., p. 95.

2. (CS 1st V) Oeuvres complètes, III, p. 311.

Rousseau realized that the ideal society he envisioned or planned could only be governed in the manner he proposed if the people from whom the general will is derived were so educated and trained that they could intelligently participate in the democratic process he envisaged:

De lui-même le Peuple veut toujours le bien, mais de lui-même il ne le voit pas toujours. La volonté générale est toujours droite, il n'est jamais question de la rectifier; mais il faut savoir l'interroger à propos; il faut lui présenter les objets tels qu'ils sont, quelquefois tels qu'ils doivent lui paroître, lui montrer le bon chemin qu'elle veut suivre.¹

The Social Contract

Rousseau and Burlamaqui accept the concept of a social contract as the legitimate origin of the civil society held by the theorists of the natural law school. The differences in their ideas bring into focus the greater originality of Rousseau's political thought than that of Burlamaqui who follows the doctrine of the natural law school more closely than his younger, fellow Genevan.

Burlamaqui conceives of the formation of a social contract between members of the independent state of nature in three stages, consisting of two conventions or contracts joined by a general ordinance or constitution:

La première Convention est celle par laquelle chacun s'engage avec tous les autres à se joindre ensemble pour toujours en un seul Corps. ... Il faut

1. Ibid.

ensuite faire une ordonnance qui établisse la forme du Gouvernement. ... Enfin, la forme du Gouvernement étant réglée, il doit y avoir encore une autre convention, par laquelle après qu'on a choisi une ou plusieurs personnes à qui l'on confère le pouvoir de gouverner, ceux qui sont revêtus de cette autorité suprême, s'engagent à veiller avec soin à la sûreté et à l'utilité commune. ... Cette dernière convention renferme une soumission des forces et des volontés de chacun, à la volonté du Chef de la Société, autant du moins que le demande le bien commun.¹

The ordinance which establishes the form of government is also called by Burlamaqui the fundamental laws of the state. Not only do these laws specify the form of the government deriving from the initial social contract, "mais encore ce sont ses Conventions entre le Peuple et celui ou ceux à qui il défère la Souveraineté, qui régulent la manière dont on doit gouverner, et par lesquelles on met des bornes à l'autorité Souveraine."² These conventions or laws reenforce by formal public contract the fundamental rights of the people accorded them by natural law.

Thus Burlamaqui's notion of the social pact involves a double contract: the first contract involves the voluntary union of individuals who unite for their common protection; the second contract constitutes a pact of submission whereby the members of the state promise to obey the sovereign (consisting of one or several persons) they have chosen. This

1. Droit politique, pp. 22-23.

2. Ibid., p. 45.

second contract also involves the formulation of the fundamental law or constitution which establishes the form of government.¹

According to Rousseau, there is only one social contract, not two: "Le Peuple ne peut contracter qu'avec lui-même: car s'il contractoit avec ses officiers, comme il les rend depositaires de toute sa puissance et qu'il n'y auroit aucun garant du contract, ce ne seroit pas contracter avec eux, ce seroit reellement se mettre à leur discretion."² Rousseau thus rejects the second contract, the pact of submission, proposed by Burlamaqui and other theorists of the natural law school. Sovereignty, according to Rousseau, must remain with the people. It cannot be transferred to one person or group of people.

The social contract, states Rousseau, is first of all a voluntary union: "L'association civile est l'acte du monde le plus volontaire; tout homme étant né libre et maître de lui-même, nul ne peut, sous quelque prétexte que ce puisse être, l'assujétir sans son aveu."³ Anyone living among a group who does not want to be a part of the social pact is not forced to adhere to the conditions of the civil

1. Gagnebin notes of Burlamaqui's concept of a double contract: "Or Burlamaqui emprunte presque textuellement à Puffendorf sa théorie du double contrat social qu'il avait résumée dans son Abrégé." (Op. cit., p. 171.)

2. (FP) Oeuvres complètes, III, p. 482.

3. (CS) Oeuvres complètes, III, p. 440.

society: "Si donc lors du pacte social il s'y trouve des opposans, leur opposition n'invalide pas le contract, elle empêche seulement qu'ils n'y soient compris; ce sont des étrangers parmi les Citoyens."¹ For this reason, the social contract requires the unanimous support of all those entering into the civil association. Those not wanting to enter into the contract are excluded from the association; however, if they choose to reside within the geographical boundaries designated by the social contract, they must submit to the authority of the civil society: "Quand l'Etat est institué le consentement est dans la résidence; habiter le territoire c'est se soumettre à la souveraineté."²

Burlamaqui is also of the opinion that anyone who chooses to reside in a particular state, must obey the laws of that state: "Quiconque entre simplement dans les Terres d'un Etat, et à plus forte raison, ceux qui veulent jouir des avantages que l'on y trouve, sont censés renoncer à leur liberté naturelle, et se soumettre aux Loix et au Gouvernement établi."³ If anyone not a participant in the social contract refuses to obey the laws of the state he can be made to leave the state or be treated like an enemy, Burlamaqui adds.

1. Ibid.

2. Ibid.

3. Droit politique, p. 27.

According to Rousseau's notion of the voluntary nature of the social contract, any time the contracting parties choose to dissolve the contract they are free to do so. The people always remain sovereign and any time they choose to change any law, be it the constitution or the social pact itself, they are free to do so: "Il n'y a dans l'Etat aucune loi fondamentale qui ne se puisse révoquer, non pas même le pacte social; car si tous les Citoyens s'assembloient pour rompre ce pacte d'un commun accord, on ne peut douter qu'il ne fût très légitimement rompu."¹ The social pact can also be broken if any of the conditions specified in the contract are modified or broken. When this happens, "le pacte social étant violé, chacun rentre alors dans ses premiers droits et reprend sa liberté naturelle."²

Burlamaqui disagrees that the social contract can be broken whenever the people choose to do so. His disagreement with Rousseau derives from his concept of a double contract. He insists that the second contract, the pact of submission, implies reciprocal obligations between the sovereign and his subjects that have to be kept: "La Loi Naturelle de la justice veut que l'on soit fidèle à ses engagements. Il est donc du devoir des Peuples de tenir la parole qu'ils ont donnée au Souverain, d'observer religieusement

1. (CS) Oeuvres complètes, III, p. 436.

2. Ibid., p. 360. For further treatment of this question see pages 281 to 289 of this dissertation.

leur Contract aussi long-tems que le Souverain s'acquitte de son côté de ses engagements."¹ For this reason Burlamaqui asserts that the social contract can be broken only if both parties to the contract--the people and the sovereign whom they have chosen--agree to do so.² If the sovereign keeps the agreements whereby he was chosen, the people do not have the right to depose him or change the fundamental laws of the pact.

If, however, the conditions of the social contract are violated, Burlamaqui agrees with Rousseau that the people have the right to change their government or dissolve the social contract. The social contract is established for one reason alone--the protection and benefit of the contracting parties:

Si donc l'Etat est dans l'impuissance de secourir et de protéger quelques-uns de ses Citoyens, ceux-ci alors se trouvent dégagés de l'obligation où ils étoient envers lui, et ils rentrent dans leur droit primitif, de se pourvoir à eux-mêmes, indépendamment de l'Etat, et de la manière qu'ils jugent la plus convenable.³

1. Droit politique, p. 100.

2. This according to Gagnebin is the same opinion that the Conseil des Deux-Cents rendered in an edict supported by Burlamaqui: "'Que cette constitution fondamentale de l'Etat ne peut être rompue ni par ceux qui gouvernent d'une part, ni par ceux qui sont gouvernés d'autre part. On ne peut la rompre, on n'y peut toucher que d'un commun accord par le consentement des deux parties.'" (Op. cit., p. 53.)

3. Droit politique, p. 176. Burlamaqui adds that he disagrees with Grotius "qui veut établir le contraire." (Ibid.)

When the conditions of the social contract are kept, the contracting parties owe an absolute allegiance and obedience to the civil society: "L'Etat, en vertu de la même Convention, a acquis un Droit sur chacune de ses parties, par lequel aucune de ses parties ne peut se soumettre à un Gouvernement étranger, ni se soustraire à celui de l'Etat."¹ Rousseau also maintains that the terms of the social contract imply absolute allegiance of citizens to the state:

Ces clauses bien entendues se réduisent toutes à une seule, savoir l'aliénation totale de chaque associé avec tous ses droits à toute la communauté: Car premièrement, chacun se donnant tout entier, la condition est égale pour tous, et la condition étant égale pour tous, nul n'a intérêt de la rendre onéreuse aux autres.²

The total alienation of one's rights to the community does not imply the denial of natural rights. The use of the term "total alienation" is but another example of Rousseau's use of the language of paradox to more firmly make his point: "L'aliénation totale n'est qu'un artifice pour garantir l'homme vivant en société de 'toute dépendance personnelle' et lui permettre d'être aussi libre que dans l'état de nature."³ Both Burlamaqui and Rousseau assert that the state has to have absolute authority over the individual, but they

1. Ibid., p. 175.

2. (CS) Oeuvres complètes, III, pp. 360-361.

3. Derathé, Rousseau et la Science politique, pp. 170-171.

do not imply that this authority is arbitrary or can destroy natural rights. Rousseau remarks: "Au lieu de détruire l'égalité naturelle, le pacte fondamental substitue au contraire une égalité morale et légitime à ce que la nature avoit pu mettre d'inégalité physique entre les hommes, et que, pouvant être inégaux en force ou en génie, ils deviennent tous égaux par convention et de droit."¹

Regarding children, Rousseau acknowledges that upon reaching the age of discernment, the former have the right to remain under the contract or to leave the state: "Par un droit que rien ne peut abroger, chaque homme, en devenant majeur et maître de lui-même, devient maître aussi de renoncer au contrat par lequel il tient à la communauté, en quittant le pays dans lequel elle est établie."² After having reached the age of accountability, formal declaration of acceptance of the social contract is not necessary for the individual to be bound by its laws. The fact that the individual remains in the country is sufficient to indicate his acceptance of the society: "Par le séjour qu'il y fait après l'âge de raison, ... il est censé confirmer tacitement l'engagement qu'ont pris ses ancêtres."³ Burlamaqui is of the same opinion: residence of children who have reached the

1. (CS) Oeuvres complètes, III, p. 367.

2. Emile, p. 581.

3. Ibid.

age of discernment in the state indicates that they are willing to abide by the laws of the state: "C'est pourquoi aussi les Souverains une fois reconnus, n'ont pas besoin de faire prêter serment de fidélité aux enfans, qui naissent depuis dans leurs Etats."¹ Nevertheless, parents cannot obligate their children to abide by the terms of the social contract if the latter do not want to do so: "La stipulation des Peres ne sçauroit avoir par elle-même la force d'assujettir les enfans malgré eux à une autorité à laquelle ils ne voudroient pas se soumettre."²

Civil Law

Rousseau's and Burlamaqui's definitions of law are closely related to their concepts of the social contract and their notions of the foundation of the civil society. Rousseau defines law as "une déclaration publique et solennelle de la volonté générale, sur un objet d'intérêt commun."³ Since the general will regards only the common interest, law must apply to all; it must be general and not particular or it ceases to be legitimate. The application of the law to individuals is the function of executive power, of magistrates. A law differs from a decree in that a decree is the

1. Droit politique, p. 27.

2. Ibid.

3. (LDM) Oeuvres complètes, III, pp. 807-808.

act of a magistrate which ordains or applies the law to an individual, whereas a law is the act of the general will and must apply to all rather than to one individual.¹ Law is always just because it is the expression of the will of everyone on those matters which concern the common interest.

Since according to Burlamaqui and his notion of a double contract the people submit themselves to the authority of a sovereign whom they choose, a law is defined as "une Règle prescrite par le Souverain d'une Société à ses Sujets; soit pour leur imposer l'obligation de faire ou de ne pas faire certaines choses, sous la menace de quelque peine; soit pour leur laisser la liberté d'agir ou de ne pas agir en d'autres choses."² He specifies that the rule prescribed by the sovereign must, in order to be law, not be contrary to reason, or in contradiction with natural law. There are four conditions necessary to constitute a law: "Il y a une Règle; Cette règle est juste et utile; Elle émane d'un Supérieur dont nous dépendons entièrement; enfin elle nous est suffisamment connue par des principes gravés dans notre coeur et par notre propre Raison."³

To be effective, laws sometimes have to force people to act in their own best interest: "Les Loix sont faites

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1. (CS) Oeuvres complètes, III, p. 399.
 2. Droit naturel, p. 89.
 3. Ibid., p. 163.

pour obliger les Sujets à agir selon leurs véritables intérêts. ... Le Souverain, ... s'il emploie quelquefois la force, c'est pour ramener à la Raison même ceux qui s'égarent contre leur propre bien et contre celui de la Société."¹

In order to be efficacious, laws must have the power to punish those who disobey them. Burlamaqui is saying that even those who are punished by the law for disobedience are being protected in their liberty by these same laws. Rousseau upholds the same principle when he asserts: "Quiconque refusera d'obéir à la volonté générale y sera contraint par tout le corps: ce qui ne signifie autre chose sinon qu'on le forcera d'être libre."²

Burlamaqui proposes that the most effective sanction of law is punishment: "Il est certain que l'homme est naturellement plus sensible au mal qu'au bien; il paroît aussi plus convenable d'établir la Sanction de la Loi dans la menace de quelque peine, que dans la promesse d'une récompense."³ He adds, however, that if punishment for breaking laws is joined with reward for their observation, the most complete sanction of law is established. Rousseau also acknowledges the necessity of punishment for law-breaking as a sanction of law: "Il faut être sévère pour être juste:

1. Ibid., p. 113.

2. (CS) Oeuvres complètes, III, p. 364.

3. Droit naturel, p. 121.

souffrir la méchanceté qu'on a le droit et le pouvoir de réprimer, c'est être méchant soi-même."¹ However, he insists that too much emphasis on punishment does not contribute to the making of honest, law-abiding citizens: "Les Loix qui parlent sans cesse de punir et jamais de récompenser sont plus propres à contenir les scelerats qu'à former d'honnêtes gens; tant que les Loix s'arrêteront aux actions et qu'elles ne diront rien à la volonté, elles seront toujours mal observées."²

Rousseau agrees with Montaigne that laws should not be too numerous or too complicated.³ Too many laws corrupt the people: "Si l'on me demandoit quel est le plus vicieux de tous les Peuples, je répondrais sans hésiter que c'est celui que a le plus de Loix."⁴ A multiplicity of laws indicates that these same laws are bad and without force. A good law does not need new interpretations and modifications: "Ces multitudes effroyables d'Edits et de déclarations qu'on

1. (DEP) Oeuvres complètes, III, p. 254.

2. (FP) Oeuvres complètes, III, p. 495.

3. Montaigne was of the opinion that France had too many laws: "Ce nombre n'a aucune proportion avec l'infinie diversité des actions humaines." (Montaigne, Essais [Paris: Editions Garnier Frères, 1962], II [Bk. III, Ch. 13, "De l'Expérience"], p. 517.) He proposed having fewer, less complicated laws: "Les plus désirables, ce sont les plus rares, plus simples et générales; et encore crois-je qu'il vaudroit mieux n'en avoir point du tout que de les avoir en tel nombre que nous les avons." (Ibid.)

4. (FP) Oeuvres complètes, III, p. 493.

voit émaner journellement de certaines cours ne font qu'apprendre à tous que le Peuple méprise avec raison la volonté de son souverain."¹

Burlamaqui insists that laws should be clear, simple and published so as to be understood by all. It is only in this manner that the people can be held accountable for infraction of law and not claim impunity of law through ignorance of its existence: "Le Souverain doit donc publier ses Loix d'une manière solennelle, claire et distincte. Mais après cela, c'est aux Sujets à s'instruire de la Volonté du Souverain."²

Burlamaqui declares that all are subject to the law, "sans acception de personne."³ Dispensation from observation of the law should be accorded by the sovereign only rarely, "car s'il accordoit des dispenses à trop de gens, sans discernement et sans choix, il énerveroit l'autorité des Loix."⁴ Rousseau, however, contends that dispensation cannot be given under any circumstances. To make the general will particular or partial, or to exempt one person from its control, would render it ineffectual. "Il n'est pas possible de se mettre au-dessus de la loi sans renoncer à ses

1. Ibid.

2. Droit naturel, p. 118.

3. Droit politique, p. 118.

4. Droit naturel, p. 122.

avantages, et personne ne doit rien à quiconque prétend ne rien devoir à personne. Par la même raison nulle exemption de la loi ne sera jamais accordée à quelque titre que ce puisse être dans un gouvernement bien policé."¹

Rousseau and Burlamaqui have similar attitudes toward law. Both have a high regard for civil law and conceive of it as being absolutely necessary for the protection and well-being of society. For the most part Burlamaqui's notion of law follows more closely the opinions of his predecessors of the natural law school than do those of Rousseau, with the exception of one concept. Rousseau makes no mention of it. It regards what Burlamaqui calls a law of simple permission:

Toutes les actions qui ne sont pas positivement ordonnées ou défendues, sont laissées dans la sphère de la Liberté naturelle; et que le Souverain est censé, par cela même, accorder à chacun la permission de faire à cet égard ce qu'il trouvera bon; et cette permission est un second effet de la Loi. On peut donc distinguer la Loi, prise dans toute son étendue, en Loi obligatoire, et en Loi de simple permission.²

Hubner, while praising Burlamaqui's ideas as a whole, was critical of this notion of a law of simple permission. He thought that such a law would give too much power to the sovereign, and added that what Burlamaqui calls a law of simple permission is merely inaction on the part of the

1. (DEP) Oeuvres complètes, III, p. 249.

2. Droit naturel, pp. 114-115.

sovereign: "L'homme est un Etre libre par sa nature. ... Quand la loi lui parle, elle produit en lui une obligation; mais dès qu'elle se tait, l'homme n'est plus obligé. Il use alors de sa liberté naturelle, sans avoir besoin d'aucune permission."¹

The Civil Society

Generally, the civil society treated by Rousseau in his Contrat social and his other works where he speaks of it with praise, is a society of order and justice. It represents the civil state as Rousseau conceived of it at its best. The same is true of Burlamaqui's description of the civil society. This is made clear in passages like the following: "La société humaine est par elle-même une société d'égalité; non-seulement parce que tous les hommes y sont également obligés à pratiquer les lois naturelles, mais encore parce qu'ils jouissent tous d'une égale liberté."² It is evident that in many civil societies this natural equality is not afforded to men. In the civil society Burlamaqui describes, there is such a natural equality of right. The present section of this study will examine the ideas of the two authors relating to different aspects of the civil

1. Martin Hubner, "Jugement sur les Principes du droit naturel de Mr. Burlamaqui," in Principes du droit naturel by J.-J. Burlamaqui (Genève: Chez Barrillot et Fils, 1748), p. 529.

2. Elémens, p. 80.

state which in their opinion would contribute to the formation and existence of a just, well ordered civil society.

The People

The attitude of a political thinker toward the people has a direct bearing on his political system. This is true of the political ideas of Burlamaqui and Rousseau. Burlamaqui's attitude toward the masses is directly related to his love of the arts and sciences, cultured society, and his concept of the nobility of reason.

Since the common people use little their powers of reasoning and are not capable of the development Burlamaqui admires so much in a cultured society, he usually speaks of them in depreciative terms. Only a minority of men are capable of the cultivated use of right reason: "La plupart des hommes abandonnés à eux-mêmes écoutent plutôt les préjugés et la passion, que la raison et la vérité."¹ For this reason, he concludes: "Il est vrai que la plupart des hommes se ravalent en quelque sorte à une vie animale, et se mettent peu en peine de perfectionner leurs facultez."²

Because the people are generally unable or unwilling to develop their faculties of reason, Burlamaqui maintains that they must be guided by those who are more

1. Droit politique, p. 10.

2. Droit naturel, p. 323.

enlightened than they: "Il y a des personnes qui ayant pris un soin particulier de cultiver leur esprit, sont en état d'éclairer les autres, et de suppléer par leurs instructions à la grossièreté et l'ignorance du commun des hommes."¹ He also compares the people to children who need to be guided by their parents or tutors: "C'est avec raison que les Politiques comparent les Peuples à des Mineurs; ils ne sont ni les uns ni les autres en état de se gouverner eux-mêmes, il faut qu'ils se donnent des Maitres."² Because the common people have little knowledge of government, they are often seditious and irritated over affairs that Burlamaqui maintains are best left in the hands of their governors. All of these reasons lead him to conclude that a democratic form of government is not good, even though he insists, as will be shown in the next chapter of this study, that the ultimate decision regarding what is best for the people must be made by the people themselves.

Similar to his attitude toward society, and his concept of reason, Rousseau's feelings regarding the people are ambivalent. Like Burlamaqui, he acknowledges that the common people are ignorant and unable to comprehend that which wise men by the use of reason are able to comprehend: "La moindre méditation fatigue ces gens-là, comme le moindre

1. Ibid., p. 206.

2. Droit politique, p. 99.

travail des bras fatigue un homme de cabinet."¹ They are unable to understand the wonders of God and nature, although instructed in them: "Or, si parmi nous le peuple, à portée de tant d'instructions, est encore si stupide, que seront ces pauvres gens abandonnés à eux-mêmes dès leur enfance, et qui n'ont jamais rien appris d'autrui?"² It is because of its ignorance in regard to the things of God, that the multitude is easily induced to believe in superstition: "On lui fera toujours des Dieux insensés comme elle."³ He notes of miracles and the spectacular: "Ce caractère est aussi celui qui saisit spécialement le peuple, incapable de raisonnemens suivis, d'observations lentes et sûres, et en toutes choses esclave de ses sens."⁴

Referring to the animosity of the public toward him Rousseau writes: "Ainsi va flottant le sot public sur mon compte, sachant aussi peu pourquoi il m'abhorre que pourquoi il m'aimoit auparavant."⁵ He often refers to the people in this context as the multitude, distinguishing them from the people organized within the civil society to form

1. Contrat social, p. 457.

2. Ibid., p. 458.

3. (CS 1st V) Oeuvres complètes, III, p. 285.

4. (LDM) Oeuvres complètes, III, p. 729.

5. Contrat social, pp. 437-438.

a general will. The multitude, that conglomerate of particular interests, does not know what is for its best good: "Il n'y a aucun gouvernement qui puisse forcer les citoyens de vivre heureux, le meilleur est celui qui les met en état de l'être s'ils sont raisonnables. Et ce bonheur n'appartiendra jamais à la multitude."¹ It is this uneducated multitude which causes so much turmoil within countries: "Dans la plupart des Etats les troubles internes viennent d'une populace abrutie et stupide, échauffée d'abord par d'insupportables vexations, puis ameutée en secret par des brouillons adroits, revêtus de quelque autorité qu'ils veulent étendre."²

From his observations on the ignorance of the common people, Rousseau concludes like Burlamaqui that the people need guidance and instruction in government and in the building of a solid moral foundation. In the Contrat social he advocates that the general will of the people be the ultimate civil authority, but he supposes this will to be derived from an educated citizenry, not an ignorant multitude for which he had little use. In the Considérations sur le Gouvernement de Pologne Rousseau cautions against letting the serfs of the country have a hand in government until they are educated enough to play a responsible role in their self-

1. (FP) Oeuvres complètes, III, p. 513.

2. (LDM) Oeuvres complètes, III, p. 889.

direction. People must be educated before they can be ruled by good laws: "Il est pour les Nations comme pour les hommes un tems de maturité qu'il faut attendre avant de les soumettre à des Loix."¹

Rousseau's hostility toward the people is directed mainly at the ignorant masses to be found in the cities. For the simple peasants, he often manifests a genuine sympathy and affection, associating them with the basic goodness of the natural man and contrasting them with the corrupted populace of the cities. He counsels the people to stay in the country and not migrate to the cities: "Il ne faut point qu'un peuple cultivateur regarde avec convoitise le sejour des villes et envie le sort des faineants qui les peuplent."² Honest labor is one of the best qualifications for good citizenship, and if the laborer has special talents, he should be allowed to have a part in government leadership: "Il faut qu'un laboureur ne soit par la naissance inferieur à personne, qu'il ne voie au dessus de lui que les loix et les magistrats et qu'il puisse devenir magistrat lui-même s'il en est digne par ses lumières et par sa probité."³ Life in the country develops robust, honest citizens while life in the city breeds laziness and corruption:

1. (CS) Oeuvres complètes, III, p. 386.

2. (PCC) Oeuvres complètes, III, p. 911.

3. Ibid.

"Or, c'est la campagne qui fait le pays, et c'est le peuple de la campagne qui fait la nation."¹

Being of common origin Rousseau, like La Bruyère, takes the side of the people in their opposition to the nobility and the disdain of the mighty: "Ne vous étonnez donc plus si les politiques parlent du peuple avec tant de dédain. ... C'est le peuple qui compose le genre humain; ce qui n'est pas peuple est si peu de chose que ce n'est pas la peine de le compter."² His encounter early in life with the misery the peasants in the country had to endure, developed within him a genuine sympathy for them: "Ce fut là le germe de cette haine inextinguible qui se développa depuis dans mon cœur contre les vexations qu'éprouve le malheureux peuple contre ses oppresseurs."³ In a criticism of the government which allows the peasant to languish in misery, Rousseau writes: "Nous n'avons plus de citoyens; ou s'il nous en reste encore, dispersés dans nos campagnes abandonnées, ils y périssent indigents et méprisés. Tel est l'état où sont réduits, tels sont les sentiments qu'obtiennent de nous

1. Emile, p. 600.

2. Ibid., p. 265. La Bruyère said: "Le peuple n'a guère d'esprit, et les grands n'ont point d'âme: celui-là a un bon fond et n'a point de dehors; ceux-ci n'ont que des dehors et qu'une simple superficie. Faut-il opter? Je ne balance pas: je veux être peuple." (La Bruyère, Oeuvres complètes [Paris: Editions Gallimard, 1962], [Ch. 9, "Des Grands," Sec. 25] p. 256.)

3. (DI) Oeuvres complètes, III, p. 164.

ceux qui nous donnent du pain, et qui donnent du lait à nos enfans."¹

There is some ambiguity in Rousseau's statements about the people because he does not always distinguish what portion of the common people he is referring to. The same is true of his remarks about society in general, as has been indicated. On the one hand he condemns society, on the other hand he praises it. When he shows sympathy for the uneducated common people, it is usually the honest laborer of the fields he is referring to or the simple working class who are industrious and close to nature. When he condemns the vile populace, it is usually in reference to the seditious multitude or the lazy, corrupt city dwellers, or perhaps even a rural mob motivated by animal instincts such as the one which drove Rousseau from his residence in Switzerland with flying stones.

In spite of his sympathy for the peasant, and his admiration for his honest virtues, Rousseau's preference in regard to the common people does not lie with the ignorant peasant. He prefers a more enlightened middle class, or an

¹: (DC) Oeuvres complètes, III, p. 26. The wording of this passage indicates Rousseau might have been influenced in writing it from the following passage by La Bruyère: "L'on voit certains animaux farouches, des mâles et des femelles, répandus par la campagne. ... Ils montrent une face humaine; et en effet ils sont des hommes. Ils se retirent la nuit dans des tanières, où ils vivent de pain noir, d'eau et de racines: ils épargnent aux autres hommes la peine de semer, de labourer et de recueillir pour vivre,

enlightened class of farmer-citizens who can intelligently participate in the affairs of their country. Rousseau can feel sympathy for the misery of the peasants, but he does not advocate that government be entrusted to their hands. The people of the Contrat social are an enlightened people capable of forming a general will to direct themselves. They are a middle class citizenry, like Rousseau himself who was from the poorer middle class: "Rousseau was a son of the people: he put his trust in the people as he did in no governing classes. . . . His idea not only of civic, but also of private virtue, is written almost exclusively in terms of middle-class life. The middle classes are for him the salt of the earth."¹ It is for this reason that he often speaks in praise of the government of his native city: "He admires the middle-class government of Geneva: It is the sanest part in the Republic, the only one of which one may feel sure that it can never, in its conduct of affairs, aim at any other objective than the good of all."² In the Lettres écrites de la Montagne he directs his criticism against those who had usurped the democratic authority of the middle-class directed government of Geneva.

et méritent ainsi de ne pas manquer de ce pain qu'ils ont semé." (La Bruyère, op. cit., [Ch. 11, Sec. 128] p. 333.)

1. Cobban, op. cit., pp. 95, 138.

2. A. Aulard, The French Revolution A Political History, trans. Bernard Miall (New York: Charles Scribners Sons, 1910), I, p. 122.

The main difference between Burlamaqui's attitude toward the people and that of Rousseau is that the latter is more democratic in his thinking than the former. Both prefer the educated middle class, but whereas Rousseau demonstrates a sympathy for a certain segment of the uneducated masses, Burlamaqui has only disapproval of them and their ignorance. For Burlamaqui, the best in men and society comes only from the cultivation of reason, development of the sciences and the arts, from the refinement of civilization. Rousseau, while accepting some of this development, rejects too much refinement and sophistication. Ever haunted by the image of the innocent, noble man of nature, he feels an affection for the hard-working rural laborer who seems to possess some of the innocent goodness of the natural man.

Public Education

The similar opinions of Burlamaqui and Rousseau on the necessity of obligation coming from within the individual have a direct bearing on their thoughts on public education. They both stress the fact that the sovereign must educate the minds of his subjects in order to obligate them to obey law. For this reason, their views on the authority and control which the sovereign has over the minds of his subjects might seem to some excessive today. It is likely that both men were influenced in their ideas on public education by the example of ancient states such as Sparta which

imposed a rigid system of education and discipline on their youth.

Referring to his concept of inner obligation, Burlamaqui notes that the obligation imposed by civil law extends not only to exterior actions, "mais encore jusques sur l'intérieur de l'homme, sur les pensées de son esprit et les sentimens de son coeur."¹ From this principle he proceeds to give the sovereign a surprising degree of control over his subject: "S'il commande une bonne action, il veut que ce soit par principe qu'on l'exécute; et lors qu'il défend un crime, il ne défend pas seulement l'action extérieure, mais il défend même d'en concevoir la pensée, d'en former le dessein."² Since man's judgment is determined from within and it is from within that he must be obligated to obey law in order for that obligation to be efficacious, Burlamaqui asserts: "Le premier Devoir du Souverain doit être de travailler à former le coeur et l'esprit de ses Sujets."³ It is by this means that the sovereign increases the authority he has over his subjects:

Ainsi le Souverain a par l'instruction un moyen très efficace d'insinuer, dans l'âme de ses Sujets, les idées et les sentimens qu'il veut leur inspirer, et par là son autorité a de très grandes influences sur les actions intérieures, sur les

1. Droit politique, p. 129.

2. Ibid., pp. 129-130.

3. Ibid., pp. 134-135.

pensées et les sentimens des hommes, qui se trouvent ainsi soumis à la direction des Loix.¹

Since the first duty of the sovereign is to establish public education, he has the right to survey and judge the doctrines which are taught publicly. He has the right to forbid the teaching of anything "qui soit contraire aux maximes fondamentales du Droit Naturel, aux Principes de la Religion ou de la bonne Politique, en un mot, rien de tout ce qui seroit capable de produire des impressions funestes au bonheur de l'Etat."²

Burlamaqui cautions, however, that there is a limit to the control which the sovereign has over the education and direction of his subjects. He points out that a certain liberty of expression on the part of teachers and men of letters is necessary for a healthy educational system and the acquisition of truth:

L'avancement des Sciences, les progrès de la Vérité demandent que l'on accorde une honnête liberté à tous ceux qui s'y appliquent, et que l'on ne condamne pas comme criminel un homme, par cela seul, qu'il a sur certaines choses des idées différentes de celles qui sont reçues communément. Il y a plus: la différente manière de penser sur les mêmes sujets, la diversité d'idées et d'opinions, bien loin de traverser les progrès de la Vérité, lui est au contraire en elle-même avantageuse."³

1. Ibid., p. 130.

2. Ibid., p. 136.

3. Ibid., p. 137.

He adds, nevertheless, that the sovereign has the right and duty to see that this liberty of expression is not carried to excesses that will be harmful to the state. The sovereign has the right to forbid from teaching or publicly expressing themselves, "ceux qui s'échauffent mal à propos dans les disputes, qui s'émancipent jusqu'à injurier, à calomnier et à vouloir rendre suspects et odieux, ceux qui ne pensent pas comme eux."¹ That which contributes to the peace and well-being of the state can be taught; that which disturbs the peace and is pernicious to the state should be forbidden by the sovereign.

Rousseau's views on individual expression in relationship to the educational process differ somewhat in Emile and in his political writings. "Emile was brought up to be a man of independent judgment and a self-disciplined man; he was brought up to be active and free and therefore eventually become a good citizen, since the free man respects in others what he claims for himself."² In his political works, however, Rousseau emphasizes molding the individual into a being who thinks and acts for the best interest of the community. It is this emphasis which constitutes the burden of his thoughts on public education.

1. Ibid.

2. Plamenatz, op. cit., p. 432.

Like Burlamaqui, Rousseau insists that public education is one of the duties of government: "L'éducation publique sous des regles prescrites par le gouvernement, et sous des magistrats établis par le souverain, est donc une des maximes fondamentales du gouvernement populaire ou légitime."¹ The good of the state depends upon the formation of citizens in their youth: "Vous aurez tout si vous formez des citoyens; sans cela vous n'aurez que de méchans esclaves, à commencer par les chefs de l'état. Or former des citoyens n'est pas l'affaire d'un jour; et pour les avoir hommes, il faut les instruire enfans."²

The kind of public education Rousseau proposes for the youth of the nation is one wherein the interest of the community becomes the interest of the individual: "On les exerce assez-tôt à ne jamais regarder leur individu que par ses relations avec le corps de l'Etat, et à n'appercevoir, pour ainsi dire, leur propre existence que comme une partie de la sienne, ils pourront parvenir enfin à s'identifier en quelque sorte avec ce plus grand tout."³ When the members of the state are thus able to identify themselves only in relation to the rest of the community, they can more easily form a general will. An education which will produce this

1. (DEP) Oeuvres complètes, III, pp. 260-261.

2. Ibid., p. 259.

3. Ibid.

result must effect a change of human nature: "Celui qui ose entreprendre d'instituer un peuple doit se sentir en état de changer, pour ainsi dire, la nature humaine; de transformer chaque individu, qui par lui-même est un tout parfait et solitaire, en partie d'un plus grand tout dont cet individu reçoive en quelque sorte sa vie et son être."¹

The type of public education Rousseau advocates also inspires patriotism: "Cet amour fait toute son existence; il ne voit que la patrie, il ne vit que pour elle, sitôt qu'il est seul, il est nul; sitôt qu'il n'a plus de patrie, il n'est plus et s'il n'est pas mort, il est pis."² Rousseau proposes in the Considérations sur le Gouvernement de Pologne that this kind of patriotism be inspired by having the education of the Polish children center around things concerning the country--its geography, economy, history, and laws; the teachers should be Polish citizens, married and distinguished by their knowledge and morals; public education should teach equality--there should be no privileged classes in the state. Equality can also be taught by having the public attend outdoor spectacles, "comme chez les anciens."³ It is clear that the kind of patriotism and education Rousseau holds up as an ideal is that typical of ancient Rome and Sparta.

1. (CS) Oeuvres complètes, III, p. 381.

2. (CGP) Oeuvres complètes, III, p. 966.

3. Ibid., p. 963.

He advocates abolishing all the ordinary amusements of the royal court, "tout ce qui effemine les hommes ... qui les distrait, les isole, leur fait oublier leur patrie et leur devoir."¹

Rousseau's purpose, like that of Burlamaqui, in stressing the role of the state in public education is to form citizens in such a way that they feel obligated to obey law from within. This is the strongest kind of obligation. It is also the manner in which the sovereign can wield the greatest authority over his subjects. They give the state much power and direction over the lives of its citizens, and feel it is necessary to do so for the welfare of both the state and the individual. In order that men might not suffer the injustice and lawlessness that exist outside of the civil state, they must submit to the discipline and educative process of a civil society governed by law. According to the emphasis which Rousseau places upon the general will of the people and the necessity of the individual making his will become that of the other members of the community, there is a more group-oriented approach to his ideas on public education than in those of Burlamaqui. The latter does not emphasize education forming the individual in a manner that his will becomes that of his fellow citizens. He leaves more room for individual

1. Ibid., p. 962.

initiative in the process of learning, teaching and the discovery of truth, as Rousseau does in Emile.

Civil Religion

Rousseau's and Burlamaqui's concept of civil religion is also directly related to their notion of the necessity of the sovereign promoting obligation from within. It is allied to the idea that the sovereign has the right of close inspection on the conduct of the lives of his subjects, and that this authority cannot be accorded to any other power. The similarity of their ideas on civil religion, as has been pointed out by others, indicates the possibility of influence on Rousseau by Burlamaqui.

The first point on which the two authors agree is that there cannot be two sovereigns within the state. Thus everything that concerns the citizens of the state which relates to the good of all, including religion, must be subject to the authority of the sovereign.¹ Rousseau criticizes the usurpation of the power of the state by the Catholic Church which creates a division of sovereignty. It gives the state two sovereigns who submit the subjects to contradictory duties:

1. Derathé indicates that this concept is also that of Hobbes: "Pour Rousseau pas plus que pour Hobbes, il ne sauroit y avoir deux souverains dans l'Etat. C'est pourquoi Rousseau n'hésite pas à se déclarer partisan de la conception hobbiennne des rapports de l'Eglise et de l'Etat." (Rousseau et la Science politique, pp. 111-112.)

Telle est la Religion des Lamas, telle est celle des Japonais, tel est le Christianisme Romain. On peut appeler celle-ci la religion du Prêtre. Il en résulte une sorte de droit mixte et insociable qui n'a point de nom. ... Tout ce qui rompt l'unité sociale ne vaut rien: Toutes les institutions qui mettent l'homme en contradiction avec lui-même ne valent rien.¹

His criticism of the usurpation of power by the Church is of course typical of his century. One of Voltaire's lifelong crusades was to help eradicate the power of the Church in France.

As a consequence of his notion of the oneness of sovereignty, Rousseau proposes that religion, or that part of religion which concerns the welfare of the state, be subject to the state:

Quand à la partie de la Religion qui regarde la morale, c'est-à-dire, la justice, le bien public, l'obéissance aux Loix naturelles et positives, les vertus sociales et tous les devoirs de l'homme et du Citoyen, il appartient au Gouvernement d'en connaître: c'est en ce point seul que la Religion rentre directement sous sa juridiction, et qu'il doit bannir, non l'erreur, dont il n'est pas juge, mais tout sentiment nuisible que tend à couper le noeud social.²

Rousseau was not alone during his century in advocating a state religion. In an article on the eighteenth-century philosophers and the separation of Church and state, Mathiez wrote:

Tous à des degrés divers, mais sous des formes assez voisines, tous firent profession de croire

1. (CS) Oeuvres complètes, III, p. 464.

2. (LDM) Oeuvres complètes, III, pp. 694-695.

à la nécessité d'une religion pour la société, pour le peuple. ... Aucun de ceux, assez rares, qui estimaient la religion mauvaise en soi, n'a formulé cette espérance, exprimé ce désir: la séparation de l'Eglise et de l'Etat. Aucun, à ma connaissance, ne crut immédiatement possible ni souhaitable l'organisation d'un état neutre, indifférent aux dogmes, à tous les dogmes, comme aux pratiques culturelles.¹

Sharing this opinion, Burlamaqui asserts that because the sovereign's duty is to provide for the happiness of the people, and because religion can either harm or aid society, "il s'ensuit que le Souverain a Droit sur la Religion, du moins autant qu'elle peut relever du commandement humain."² Like Rousseau, he affirms that the sovereign must have authority over the religion of the state because to do otherwise is to establish "dans une seule et même Société, deux Puissances Souveraines et indépendante l'une de l'autre, ce qui est également incompatible avec la nature de la Souveraineté, et contradictoire avec soi-même."³ To sustain his principle he cites the New Testament: "On peut fort bien appliquer ici les paroles de Jésus Christ lui-

1. Albert Mathiez, "Les Philosophes et la Séparation de l'Eglise et de l'Etat," Revue Historique, CIII (1910), 64. As examples, Mathiez cites Montesquieu: "Si Montesquieu ... tient fermement à la suprématie du pouvoir civil, il est à cent lieues de l'idée de l'Etat laïque et neutre." (Ibid., p. 66.) Summarizing Voltaire's thought, he said: "En un mot, l'Eglise doit être l'humble servante de l'Etat." (Ibid., p. 67.) He adds that Helvetius was an exception in his time and believed in laicized education and religion. (Ibid., p. 69.)

2. Droit politique, pp. 139-140.

3. Elémens, p. 139.

même: 'Nul ne peut servir deux Maîtres, et tout Royaume divisé contre soi-même périra nécessairement.'"¹ The sovereign has the right to have control over religion because all that which pertains to things human is directly his responsibility.² He points out that the limits the sovereign imposes on the power of religious authorities is no different from those put upon other organizations within the state. The sovereign has as much right to restrict the authority of the Church as he does to limit the power of merchants, the medical profession or any other organized group under his jurisdiction.

To indicate the nature of the control which the sovereign has over religion, Burlamaqui distinguishes two kinds of worship--interior and exterior. It is this exterior worship over which the sovereign has direct control and which constitutes Burlamaqui's civil religion: "Il doit consister à instruire les hommes, et à les rendre pieux et vertueux, en leur donnant de justes idées de la nature de Dieu et de ce qu'il exige de nous."³ The control of the sovereign

1. Ibid.

2. Gagnebin indicates that Burlamaqui's position is similar to that of Grotius and Calvin; the latter said the state had absolute control of the teaching of religion within the state. (Op. cit., p. 196.)

3. Droit naturel, p. 182.

over this exterior cult includes the government of the Church. Enumerating some of the functions of the civil religion, Burlamaqui states: "On doit encore rapporter à ce culte l'établissement des ministres de la religion, les assemblées religieuses, l'instruction des peuples, les prières et toutes les cérémonies de la religion."¹

Burlamaqui contrasts exterior worship or the civil religion with interior worship. Exterior worship is what he calls government of authority, while interior worship is government of simple direction. The government of authority over religious matters carries with it an obligation that is enforced by the sovereign like any other civil law. The government of simple direction used by the pastors of the Church is, on the other hand, "un Gouvernement de conseil, d'instruction, de persuasion. ... Leur pouvoir est de déclarer les ordres de Dieu, leur commission ne va pas au-delà."² These two kinds of government are complementary, and when kept within their just limits they furnish the best kind of civil government: "Ainsi il n'y a point de contradiction à dire, que le Souverain gouverne les Pasteurs, et qu'il en est lui-même gouverné, pourvu qu'on ait égard aux divers genres de Gouvernement."³

1. Elémens, pp. 37-38.

2. Droit politique, p. 146.

3. Ibid.

While the authority of the sovereign and the pastors differs with regard to external worship, the same limitations are imposed on both in regard to internal worship. Since the government of the pastors is limited to that of counsel and persuasion, they of course are never able to constrain their followers to believe or practice any form of religion. The sovereign, while able to enforce by threat of punishment the external form of worship of the civil religion, is likewise powerless to force his subjects to believe any particular doctrine: "Le Souverain ne sçauroit s'attribuer légitimement l'Empire sur les consciences, comme s'il étoit en son pouvoir d'imposer la nécessité de croire tel ou tel article en matière de Religion."¹ For trying to impose such belief, Burlamaqui condemns "cet établissement barbare et tyrannique, que l'on appelle l'Inquisition; Etablissement également outrageux à la Divinité et pernicieux à la Société humaine."²

Although the tenets of the civil religion are those of natural religion and they apply mainly to the social duties of man as these relate to God, it is evident that the civil religion of which Burlamaqui speaks is based on the Christian religion. The sacraments and external forms of worship of which he speaks are basically Christian.

1. Ibid., p. 142.

2. Ibid., pp. 184-185.

Referring to the utility of civil religion in inducing people to obey the laws of society he says: "Rien n'est plus propre à rendre les Citoyens véritablement Gens de bien, que de leur inspirer de bonne heure les principes et les maximes de la Religion Chrétienne, épurée de toutes les inventions humaines."¹ He also declares that one of the limits imposed upon the sovereign in regard to civil religion, is that he cannot forbid anything contrary to the Gospel or the tenets of Christianity:

Aucune autorité humaine ne peut, par exemple interdire la prédication de l'Evangile, ou l'usage des Sacremens; ... elle ne peut établir un nouvel article de foi, ni introduire un nouveau culte. Car Dieu nous ayant donné une Règle de Religion, et nous ayant défendu d'altérer cette Règle, il n'est au pouvoir d'aucun homme de le faire.²

This, of course, is in harmony with the precepts of the civil religion established by Calvin.

Now, whereas Burlamaqui implies that the best kind of civil religion is that which has a Christian basis, and asserts that any dogma or principles of a civil religion which are contrary to the precepts of the Gospel cannot be imposed by the sovereign, Rousseau, on the contrary, deliberately excludes Christianity from his civil religion. Notwithstanding his profession of belief in Christianity and his acceptance of the sublimity of the principles of the

1. Ibid., p. 117.

2. Ibid., pp. 141-142.

Gospel, Rousseau maintains that the Christian religion is not suited to be a civil religion.¹ It is unsuitable to be a civil religion, mainly, because it is a universal religion:

Ceux donc qui ont voulu faire du Christianisme une Religion Nationale et l'introduire comme partie constitutive dans le système de la Législation, ont fait par là deux fautes, nuisibles, l'une à la Religion, et l'autre à l'Etat. Ils se sont écartés de l'esprit de Jésus-Christ dont le regne n'est pas de ce monde, et mêlant aux intérêts terrestres ceux de la Religion, ils ont souillé sa pureté céleste, ils en ont fait l'arme des Tyrans et l'instrument des persécuteurs.²

For Rousseau, Christianity is the inner worship of which Burlamaqui speaks. It must be taught only by persuasion. Its government is of another world. Thus to apply its principles to govern a nation, in Rousseau's mind, would be disastrous: "Le Christianisme ... rendant les hommes justes, modérés, amis de la paix, est très avantageux à la société générale; mais il énerve la force du ressort politique, il complique les mouvemens de la machine, il rompt l'unité du corps moral."³ According to him, a nation of true Christians would be a nation of slaves: "Le Christianisme ne prêche que servitude et dépendance. ... Les vrais Chrétiens sont

1. According to Derathé, "la critique du Christianisme dans le Contrat social s'inspire visiblement de Machiavel." (Robert Derathé, "La religion civile selon Rousseau," Annales de la Société Jean-Jacques Rousseau, XXXV [1959-1962], 164.)

2. (LDM) Oeuvres complètes, III, p. 704.

3. Ibid., p. 705.

faits pour être esclaves; ils le savent et ne s'en émeuvent gueres; cette courte vie a trop peu de prix à leurs yeux."¹
 The Crusaders in his view were not true Christians, otherwise they would not have taken up the sword.

The second difference between Rousseau's and Burlamaqui's concept of civil religion also derives from Rousseau's notion of the Christian religion. Since according to Rousseau Christianity detaches men from the things of this world, being a kingdom of another world, it cannot constitute a civil religion because civil religion is concerned only with this world. The dogmas of civil religion interest the sovereign only inasmuch as these dogmas affect the morality and civil duties of his subjects: "Quel que soit le sort des sujets dans la vie à venir ce n'est pas son affaire, pourvu qu'ils soient bons citoyens dans celle-ci."²
 Burlamaqui, in an opinion quite different from his contemporaries,³ maintains the contrary: "Il doit donc travailler à pourvoir au bonheur éternel de ses Sujets, aussi bien

1. (CS) Oeuvres complètes, III, p. 467.

2. Ibid., p. 468.

3. "En attribuant à l'Eglise un rôle de simple inspirateur, 'un gouvernement de simple direction' et en donnant à l'Etat le soin de pourvoir au bonheur non seulement temporel mais spirituel de ses sujets, Burlamaqui exprime une thèse originale à la fois dans son Ecole et dans sa propre patrie." (Gagnebin, op. cit., p. 204.)

qu'au bonheur temporel et présent. C'est une chose qui est du ressort de son autorité."¹

Despite Rousseau's rejection of Christianity as a civil religion, and despite his assertion that the sovereign is concerned only with the temporal life of his subjects, his ideas on civil religion are largely similar to Burlamaqui's. Burlamaqui implies that the principles of Christianity should be inherent in the civil religion, but he does not advocate any sectarian interpretation of the Bible as its basis. The basis of his civil religion is natural religion. He declares that the sovereign should be concerned with the future life of his subjects, but only inasmuch as this concern is related to the duties of natural religion. Rousseau's civil religion is centered mainly around the "sentimens de sociabilité."² The dogmas of the civil religion are essentially those of the natural religion proposed by Burlamaqui:

Les dogmes de la Religion civile doivent être simples, en petit nombre, énoncés avec précision sans explications ni commentaires. L'existence de la Divinité puissante, intelligente, bienfaisante, prévoyante et pourvoyante, la vie à venir, le bonheur des justes, le châtement des méchants, la sainteté du Contract social et des Loix; voilà les dogmes positifs. Quant aux dogmes négatifs, je les borne à un seul; c'est l'intolérance.³

1. Droit politique, p. 140.

2. (CS) Oeuvres complètes, III, p. 468.

3. Ibid., pp. 468-469.

Rousseau differentiates between natural and civil religion in that the former consists of inner worship, "sans Temples, sans autels, sans rites, bornée au culte purement intérieur du Dieu Suprême et aux devoirs éternels de la morale."¹ It is the pure religion of the Gospel or divine natural law. Its tenets serve as the basis of the civil religion. The latter consists of the outer forms of worship of the natural religion and carries with it the power of the state to enforce its observance: "Elle a ses dogmes, ses rites, son culte extérieur prescrit par des lois."² The civil religion even has the right of life and death over its adherents: "Si quelqu'un, après avoir reconnu publiquement ces mêmes dogmes, se conduit comme ne les croyant pas, qu'il soit puni de mort; il a commis le plus grand des crimes, il a menti devant les lois."³

This particular passage has been widely critized, even by those who are generally favorable toward Rousseau. Janet referred to this text as "une bien grande exagération, et un condamnable emportement de langage. ... Ce sont là les maximes de l'Inquisition."⁴ Rousseau is, of course, careful to explain that his concept of civil religion does

1. Ibid., p. 464.

2. Ibid.

3. Ibid., p. 468.

4. Op. cit., p. 451.

not imply tyranny or restrict freedom of conscience. The fact remains, however, that he is prescribing an immoderate punishment for the hypocritical, public expression of belief that one does not have. Although such punishment seems excessive, in Rousseau's day the idea he expresses was perhaps not as odious as it seems in our time. De Félice in his commentaries on Burlamaqui, for example, is of the opinion that atheists "ne sont point de simples ennemis de Dieu, pour parler le langage de Hobbes, ... mais ce sont des sujets rebelles, coupables du crime de lèze-Majesté divine; titre que Hobbes lui-même leur donne dans un autre endroit."¹ De Félice continues that according to Hobbes, "le crime de lèze-Majesté humaine consiste à témoigner ouvertement par tous ses discours et par toutes ses actions qu'on ne veut plus obéir à une personne ou à une assemblée revêtue de l'autorité suprême, c'est-à-dire, lorsque l'on secoue entièrement le joug légitime de l'obéissance civile."² The crime of treason of course is punishable by death. It is possible that Rousseau was influenced by Hobbes in his remarks on punishing by death those who publicly conduct themselves as though not believing in the dogmas of the civil religion: they have committed the worst of crimes--treason; they have testified openly by their actions that

1. Burlamaqui, Droit de la nature et des gens, II, p. 191.

2. Ibid.

they will not obey the supreme authority of the land. Thus while Rousseau advocates the death penalty for an infraction which seems not to merit such severe punishment, he was not alone in his day in subscribing harsh penalties for public breach of civil religious conduct.¹

Despite the absolute authority Rousseau accords the sovereign in regard to civil religion, he fixes certain limits to the extent of this authority. The sovereign, for example, cannot prescribe what one must believe: "Chacun en demeure seul juge pour lui-même, et ne reconnoit en cela d'autre autorité que la sienne propre."² The right or control which the sovereign has over the lives of the members of the social pact in religious matters or any other matter,

ne passe point ... les bornes de l'utilité publique. Les sujets ne doivent donc compte au Souverain de leurs opinions qu'autant que ces opinions importent à la communauté. Or il importe bien à l'Etat que chaque Citoyen ait une Religion qui lui fasse aimer ses devoirs; mais les dogmes de cette Religion n'intéressent ni l'Etat ni ses membres qu'autant que ces dogmes se rapportent à la morale.³

Rousseau specifies that crimes committed solely against religion must be punished only by punishment peculiar

1. It should be noted, however, that Rousseau did not condone capital punishment for atheists. He said in a note to La Nouvelle Héloïse: "Si j'étois magistrat et que la loi portât peine de mort contre les athées, je commencerois par faire brûler comme tel quiconque en viendrait dénoncer un autre." (Oeuvres complètes, III, p. 1505.)

2. (LDM) Oeuvres complètes, III, p. 713.

3. (CS) Oeuvres complètes, III, pp. 467-468.

to religious societies and that excommunication is "la peine la plus grande de quiconque a dogmatisé contre la Religion."¹ Ecclesiastical authorities have no right to punish corporally for either civil or religious crimes. The state alone has this right. By the same token, civil tribunals cannot punish for sins, or that which regards the soul; they can only punish crimes which are contrary to the civil law: "La Loi ordonne de faire ou de s'abstenir, mais elle ne peut ordonner de croire. Ainsi quiconque n'attaque point la pratique de la Religion, n'attaque point la Loi."² He also states that whereas the sovereign has the right to establish the religious dogma to be taught in the state, the people are not obligated to accept these concepts--reason must be free to choose as it will.

Rousseau and Burlamaqui were undoubtedly influenced in formulating their concepts of a civil religion by the civil religion of their native city. This influence on Burlamaqui has already been cited. Gagnebin in a discussion of Derathé's article on the civil religion and Rousseau said: "En 1762, dans la Confédération suisse, chaque Etat impose sa propre religion à la population. ... Je crois que Rousseau ne fait qu'appliquer dans son Contrat social ce principe que l'Etat a, en quelque sorte, le droit d'imposer une

1. (LDM) Oeuvres complètes, III, p. 779.

2. Ibid., p. 787.

religion."¹ In this same discussion Stelling-Michaud stated: "Je crois qu'il faut remonter à Calvin et aux grandes ordonnances de 1543. Rousseau avait l'idéal de la cité église présent à l'esprit et il s'en est inspiré. ... Que propose Rousseau si ce n'est ce que Calvin a voulu réaliser?"²

Property

The right to possess private property occupies an important place in the political thinking of both Burlamaqui and Rousseau. The latter declares: "Il est certain que le droit de propriété est le plus sacré de tous les droits des citoyens, et plus important à certains égards que la liberté même."³ He adds that there are three reasons why property rights might be considered more important than liberty: life is often dependent upon property; property rights are harder to defend than the life of a person; "enfin parce que la propriété est le vrai fondement de la société civile, et le vrai garant des engagemens des citoyens: car si les biens ne répondaient pas des personnes, rien ne seroit si facile que d'éluder ses devoirs et de se moquer des lois."⁴

1. Derathé, "La Religion civile selon Rousseau," p. 171.

2. Ibid., p. 176.

3. (DEP) Oeuvres complètes, III, pp. 262-253.

4. Ibid. p. 263.

Burlamaqui is as emphatic as Rousseau and Locke in proclaiming that property is one of man's important rights. According to him, the right to possess private property precedes the formation of the state, and is a right pertaining to the individual, not to the sovereign: "A parler en général, il faut tenir pour constant, que le Droit du Prince, sur les biens des Sujets, n'est point un Droit de propriété."¹ He points out that when the sovereign has absolute power over the property of his subjects it is disadvantageous to the welfare of the state: "Les Païs où il a lieu, quelques beaux et fertiles qu'ils soient par eux-mêmes, deviennent tous les jours plus deserts, plus pauvres et plus barbares."² The sovereign has the right to dispose of the property and goods of his subjects as part of the right of eminent domain, but only when it is absolutely necessary for the public utility. When the sovereign exercises this right, the state must reimburse the individual for his loss if it is at all possible: "Ainsi le Droit dont il s'agit n'a lieu que dans une nécessité d'Etat, à laquelle on ne doit pas donner trop d'étendue, mais qu'il faut, au contraire, tempérer autant qu'il est possible par les Régles de l'Equité."³

1. Droit politique, p. 165.

2. Ibid., p. 164.

3. Ibid., p. 172.

Although Burlamaqui maintains that the right of private property precedes the existence of the state, he does not claim that it is a natural right deriving from the primitive, natural state of man:

Puisque tous les hommes avoient originairement le droit d'user en commun de tout ce que la Terre produit pour leurs besoins; il est bien manifeste que si ce pouvoir naturel se trouve actuellement restreint et limité à divers égards, ce ne peut être que par une suite de quelque fait humain; et par conséquent l'état de propriété, qui produit ces limitations, doit être mis au rang des états accessoires.¹

Thus according to Burlamaqui's concept, the right of private property is an acquired right which is obtained in an intermediary stage between the original state of nature and the formation of the civil society. It is a right acquired according to the principle of first occupancy during the second stage of the natural state. Although it is an acquired right, because it is a right which precedes the formation of the civil society, it can be considered by men living in the civil state as a natural right limiting the power which the sovereign has over the property of his subjects. The latter can seize this property only in case of necessity for the public good.

Rousseau agrees with Burlamaqui that the right to private property is originally derived from the right of first occupancy. He also insists that this right must be

1. Droit naturel, pp. 46-47.

limited to the possession of that which the original occupant has need of for his own sustenance: "Comment un particulier peut-il s'emparer d'un territoire immense et en priver le genre humain, autrement que par une usurpation punissable."¹ It is this kind of theft or appropriation which he criticizes so much in the Discours sur l'Inégalité. When a man appropriates more property than he can use and thus deprives another of the means to sustain life, it is then that he in essence robs others of their natural right to use the goods of the earth destined for the use of all. This is what Rousseau is referring to when he writes in the Second Discourse that property is theft. He is not condemning the legitimate right men can and should have to own private property. He names three conditions necessary to make the ownership of private property, and the right of the first occupant to that property, a legitimate right: "Premièrement qu'il ne soit encore habité par personne. Secondement qu'on n'en occupe que la quantité dont on a besoin pour sa subsistance. En troisième lieu qu'on en prenne possession non par une vaine cérémonie mais par le travail et la culture."²

Rousseau, like Burlamaqui, also speaks of property as an acquired right. Although men can possess property before the formation of the social contract and the civil

1. (CS 1st V) Oeuvres complètes, III, p. 301.

2. Ibid., pp. 301-302.

society, because they cannot be sure that they will enjoy this possession without the protection of civil law, Rousseau speaks of property being derived from the social contract: "Ce que l'homme perd par le contract social, c'est sa liberté naturelle et un droit illimité à tout ce qui le tente et qu'il peut atteindre; ce qu'il gagne, c'est la liberté civile et la propriété de tout ce qu'il possède."¹

The property he speaks of gaining here is that which the individual already possesses, or the assurance that he can peacefully enjoy this possession. The right to private property while ensured by the social contract, actually precedes the latter and serves as its foundation:

"Il faut se ressouvenir ici que le fondement du pacte social est la propriété, et sa première condition, que chacun soit maintenu dans la paisible jouissance de ce qui lui appartient."² When Rousseau says that the possession of property or the right of first occupancy is derived from the social contract, he is saying that it is the social contract which makes the right of property real: "Le droit de premier occupant, quoique plus réel que celui du plus fort, ne devient un vrai droit qu'après l'établissement de celui de propriété."³ The right of first occupancy becomes a true right

1. (CS) Oeuvres complètes, III, p. 364.

2. (DEP) Oeuvres complètes, III, p. 269.

3. (CS) Oeuvres complètes, III, p. 365.

only upon the formation of the social pact which guarantees the individual the enjoyment of his possession. Similarly, Rousseau speaks of other rights which although actually existent in the natural state, cannot be safeguarded or are not true rights until civil law makes them such. Thus, while liberty is a natural right, according to the natural law, it cannot be ensured or enjoyed until the civil society guarantees that it will not be violated by others.

Now, in order to ensure to each individual the enjoyment of his own property, Rousseau says there must be a total alienation of that property to the general will:

Ce qu'il y a de singulier dans cette aliénation, c'est que, loin qu'en acceptant les biens des particuliers la communauté les en dépouille, elle ne fait que leur en assurer la légitime possession, changer l'usurpation en un véritable droit, et la jouissance en propriété. ... Par une cession avantageuse au public et plus encore à eux-mêmes, ils ont, pour ainsi dire, acquis tout ce qu'ils ont donné. Paradoxe qui s'explique aisément par la distinction des droits que le souverain et le propriétaire ont sur le même fond, comme en verra ci-après.¹

Like Burlamaqui he affirms that the state has the right to dispose of the property within its boundaries: "Le droit que chaque particulier a sur son propre fond est toujours

1. Ibid., p. 367. Property belongs to the citizen and the state: "Tous ces objets doivent être considérés sous un double rapport: savoir, le sol comme territoire public et comme patrimoine des particuliers; les biens comme appartenant dans un sens au souverain et dans un autre aux propriétaires." ([EASP] Oeuvres complètes, III, p. 608.)

subordonné au droit que la communauté a sur tous."¹ The sovereign has the right of eminent domain over the property of his subjects, but he must respect the property of each individual: "Si c'est sur le droit de propriété qu'est fondée l'autorité souveraine, ce droit est celui qu'elle doit le plus respecter."² When Rousseau states that the sovereign or the general will can appropriate that which belongs to all, he is saying the same thing as Burlamaqui when the latter asserts that the sovereign can take possession of private property when the public good or the good of all is concerned.

Nevertheless, Rousseau goes farther than Burlamaqui in giving the state authority over private property. In works such as the Constitution pour la Corse he speaks of weakening private property and increasing the property of the state: "Je veux en un mot que la propriété de l'état soit aussi grande, aussi forte et celle des citoyens aussi petite, aussi foible qu'il est possible."³ He affirms that his intention is not to destroy private property, for that would be impossible, but to limit it in order that it always be subordinated to the public good. He insists that the acquisition of too much property by one individual or by several

1. (CS) Oeuvres complètes, III, p. 367.

2. Emile, p. 589.

3. (PCC) Oeuvres complètes, III, p. 931.

is pernicious to the well-being of the state: "L'état social n'est avantageux aux hommes qu'autant qu'ils ont tous quelque chose et qu'aucun d'eux n'a rien de trop."¹ His model is the simple, ancient city-state of Sparta of which De Félice wrote: "Lycurgue a voulu rendre son peuple vertueux et vaillant, et par ce moyen il y parvint. Cette même imitation des loix naturelles lui fit introduire dans sa république, autant que la nature du gouvernement le permettait, cette heureuse égalité des biens."² Rousseau proposes to limit inequality of riches so that some cannot wield too great authority over others, and so that an overly rich class cannot despise and subjugate an extremely poor class of people.

Although he does not speak of the equalization of property as does Rousseau, Burlamaqui agrees that opulence and luxury are pernicious to the state: "L'histoire nous apprend une chose très remarquable, c'est que le luxe a été, dans tous les tems une des causes qui ont le plus contribué à la décadence et à la ruïne des Etats même les plus puissants; c'est que le luxe amollit insensiblement le courage et ruïne la vertu."³ Once a nation becomes accustomed to luxury and opulence, it begins to look upon superfluity as

1. (CS) Oeuvres complètes, III, p. 367.

2. Burlamaqui, Droit de la nature et des gens, II, p. 55.

3. Droit politique, p. 167.

being necessary, "et ce sont tous les jours de nouvelles nécessités qu'on invente. Ainsi les Familles se ruinent, et les Particuliers se mettent dans l'impuissance de contribuer aux dépenses nécessaires pour le Bien public."¹ Thus his objection to luxury is twofold: it monetarily weakens the state, and even more important, it weakens the moral fibre of the people as do all excessive indulgences in pleasures. To limit the accumulation of riches and luxuries, he proposes the enactment of sumptuary laws: "Pour rendre les Loix Somptuaires plus efficaces, les Princes et les Magistrats doivent par l'exemple de leur propre moderation, faire honte à ceux qui aiment une dépense fastueuse, et encourager les sages."²

Opposing the views of Voltaire and many of his contemporaries, Rousseau sees nothing good in luxury: "On croit m'embarrasser beaucoup en me demandant à quel point il faut borner le luxe? Mon sentiment est qu'il n'en faut point du tout. Tout est source du mal au-delà du nécessaire physique."³ Like Burlamaqui he condemns luxury as a corruptor of morals, as a destructive element in the state:

Je sai que notre Philosophie, toujours féconde en maximes singulières, prétend, contre l'expérience de tous les siècles, que le luxe fait la splendeur

1. Ibid., p. 166.

2. Ibid., p. 167.

3. (DS) Oeuvres complètes, III, p. 95.

des Etats; mais après avoir oublié la nécessité des loix somptuaires, osera-t-elle nier encore que les bonnes moeurs ne soient essentielles à la durée des Empires, et que le luxe ne soit diamétralement opposé aux bonnes moeurs?¹

According to Rousseau, the philosophy of luxury is "molle et effeminée."²

Rousseau insists that if sumptuary laws are used to do away with luxury, they must be aimed primarily at the rich and the mighty: "Etablissez alors des loix somptuaires, mais rendez-les toujours plus sevéres pour les premiers de l'Etat, relâchez-les pour les degrés inférieurs; faites qu'il y ait de la vanité à être simple, et qu'un riche ne sache en quoi se faire honneur de son argent."³ Nevertheless, Rousseau has little confidence in the ability of sumptuary laws to obtain these results:

Ce n'est pas par des loix somptuaires qu'on vient à bout d'extirper le luxe. ... Les loix somptuaires irritent le desir par la contrainte plustôt qu'elles ne l'éteignent par le châtement. La simplicité dans les moeurs et dans la parure est moins le fruit de la loi que celui de l'éducation.⁴

1. Ibid., p. 19.

2. (FP) Oeuvres complètes, III, p. 518.

3. (PCC) Oeuvres complètes, III, p. 936.

4. Ibid., pp. 965-966. Rousseau might have been influenced by Montaigne in writing this passage. Montaigne said that sumptuary laws designed to curb the vain spending of only the people actually increase their desire for luxury by depriving them of those riches displayed by the nobility which the people covet. Instead of sumptuary laws to curtail luxury, "le vray moyen, ce seroit d'engendrer aux hommes le mespris de l'or et de la soye comme de choses vaines et inutiles." (Essais, I [Bk. 1, Ch. 43], pp. 299-300.)

CHAPTER V

POLITICAL LAW

The final chapter of this dissertation treating Rousseau's and Burlamaqui's concepts of sovereignty, government and international relations, it will be noted, is closely related to the foregoing chapters. Concepts treated in the preceding chapter of this work are especially important and pertinent to their notions of sovereignty, the exercise of supreme authority. Thus it will be seen that the notion of a social contract and the general will are at the very heart of Rousseau's concept in the same manner as the social contract, obligation and natural law are important to Burlamaqui's notion of sovereignty.

Sovereignty

Foundation

According to Rousseau, sovereignty originates, resides and must always remain in the general will of the people. The convention establishing the social contract marks the creation of the civil organization from which derives this supreme will. An act of sovereignty must emanate from the general will of the people: "Qu'est-ce donc proprement qu'un acte de souveraineté? Ce n'est pas une convention du

supérieur avec l'inférieur, mais une convention du corps avec chacun de ses membres."¹ Rousseau thus rejects the notion that sovereignty can be passed from the people to those whom they choose to govern them, and criticizes Grotius and Barbeyrac for advocating this kind of transfer of sovereignty:

Grotius réfugié en France, mécontent de sa patrie, et voulant faire sa cour à Louis XIII à qui son livre est dédié, n'épargne rien pour dépouiller les peuples de tous leurs droits et pour en revêtir les rois avec tout l'art possible. C'eut bien été aussi le goût de Barbeyrac, qui dédiait sa traduction au Roi d'Angleterre George I.²

Derathé points out that Rousseau's notion of sovereignty residing in the people is the same as that of Althusius, the sixteenth-century writer. The latter, in his Politique, affirmed that the exercise of sovereignty is an inalienable, incommunicable right which pertains only to the people: "Althusius nous paraît n'avoir pas été seulement le précurseur de Rousseau, mais aussi son maître. ... C'est au nom du même idéal politique que l'un s'est mesuré avec Bodin et que l'autre a lutté contre l'absolutisme de Hobbes, Grotius et Pufendorf."³ Whether it was Althusius or

1. (CS) Oeuvres complètes, III, p. 374.

2. Ibid., p. 370.

3. Derathé, Rousseau et la Science politique p. 99. The author states that the fundamental difference between Althusius and Rousseau is that the former conceived of a social contract among collective communities possessing sovereignty, whereas Rousseau thought of a social contract among individuals forming the civil state. (Ibid., p. 98.)

someone else who more directly influenced Rousseau in the formulation of his concept, it is a fact that Rousseau seems to be one of the few men of his time who insisted that sovereignty cannot be alienated from the people.¹

Rousseau also insists that sovereignty cannot be divided and criticizes those who divide the object of sovereignty: "Ils la divisent en force et en volonté, en puissance législative et en puissance exécutive, en droits d'impôts, de justice, et de guerre. ... Ils font du Souverain un être fantastique et formé de pieces rapportées."² Sovereignty cannot be alienated or shared; it must remain with the general will or the union of the civil body: "Le corps politique ou le Souverain ne tirant son être que de la sainteté du contract ne peut jamais s'obliger, même envers autrui, à rien qui déroge à cet acte primitif, comme d'aliéner quelque portion de lui-même ou de se soumettre à un autre Souverain."³ In order to keep this sovereignty intact, to keep a unity of the general will, Rousseau insists that there be no factions or divisions among the general assembly of the people. The general will can transfer power but not

1. Derathé mentions that besides Althusius, Buchanan and Locke affirmed before Rousseau that there is no pact between those who govern and the people, but merely a commission given by the people to the government which serves them. (*Ibid.*)

2. (CS) Oeuvres complètes, III, p. 369.

3. *Ibid.*, p. 363.

sovereignty. This in essence is what happens when the general will gives government or the executive power the authority to administer the particular affairs of the state. This subordinate power, however, shares no part of sovereignty, for the latter always remains with the general will which constitutes the legislative power of the state.

Rousseau maintains as well that sovereignty is absolute: "Comme la nature donne à chaque homme un pouvoir absolu sur tous ses membres, le pacte social donne au corps politique un pouvoir absolu sur tous les siens, et c'est ce même pouvoir, qui, dirigé par la volonté générale porte, comme j'ai dit, le nom de souveraineté."¹ It is a general principle of all stable government, that sovereign authority must be absolute. To allow any member of society exemption from obedience to the law, says Rousseau, is to put the other members of society at his discretion or under his power.

Rousseau was not alone in declaring that sovereignty must be absolute: "La suprématie absolue de l'Etat a été le dogme commun de presque tous les politiques avant J.-J. Rousseau."² He differs with many of his contemporaries and predecessors, however, in that he accords this absolute authority only to the people.³ Most of the natural law theorists

1. Ibid., p. 372.

2. Janet, op. cit., p. 452.

3. Comparing Rousseau and Voltaire Faguet wrote:

who maintained that sovereignty originates with the people, passed this absolute authority by way of the double contract to a sovereign composed of one or several members. Pufendorf, says Derathé, considered the pact of submission as a "soumission absolue, comme une aliénation sans réserve qui pratiquement dépouille le peuple de tous ses droits."¹ Burlamaqui's position lies somewhere in between that of Pufendorf and Rousseau. He also accords the sovereign absolute power, but he is careful to assert that this power cannot be used to deprive the people of their basic rights.

Like Rousseau, Burlamaqui affirms that the sovereign has the right to command obedience from all his subjects "de telle sorte que tous les Particuliers soient obligés de s'y soumettre, sans qu'aucun puisse lui résister."² To admit otherwise would not afford the members of society the order and tranquillity which is the very purpose for the formation of the civil society. The nature of man necessitates his being corrected sometimes by a strong hand: "C'est pourquoi il faut que le Souverain soit armé de pouvoir et de force, pour soutenir son autorité."³

"Rousseau est despotiste. Voltaire est despotiste. Seulement Rousseau est pour le despotisme du peuple et Voltaire est pour le despotisme du roi." (La Politique comparée de Montesquieu, Rousseau et Voltaire, p. 75.)

1. Rousseau et la Science politique, p. 216.
2. Droit politique, p. 25.
3. Droit naturel, p. 106.

Burlamaqui maintains that sovereignty is absolute in another sense as well: "Cette Puissance une fois établie, n'en reconnoit sur la terre aucune au-dessus d'elle, ou qui lui soit supérieure ou égale, et que par conséquent, ce qu'elle fait ou établit dans l'étendue de son pouvoir, ne sauroit être annullé par aucune autre volonté humaine, en-tant que supérieur."¹ He qualifies his statement that there is no power above that of the sovereign by indicating that he is referring to human power. The sovereign is of course subject to God in the same manner that the laws of the sovereign are subject to natural law.

Burlamaqui also agrees with Rousseau that sovereignty derives from convention: "Il est certain que l'autorité Souveraine ... resulte immédiatement des Conventions mêmes qui forment la Société Civile."² By so stating Burlamaqui is, of course, denying the contention of those who claim that kings receive the authority to rule from God who is the immediate source of the sovereign power they exercise. He concedes the title of God's representatives on earth to sovereigns only in a figurative sense: "Lors qu'on donne aux Souverains le titre de Lieutenans de Dieu sur la terre, cela ne veut pas dire qu'ils tiennent leur autorité immédiate de Dieu lui-même mais cela signifie simplement

1. Droit politique, p. 36.

2. Ibid., p. 30.

qu'au moyen du pouvoir qu'ils ont en main, ils entretiennent conformément aux vûes de Dieu, l'ordre et la paix."¹

According to Burlamaqui, "la Souveraineté réside originairement dans le Peuple, et dans chaque Particulier par rapport à soi-même, et que c'est le transport et la réunion de tous les Droits de tous les Particuliers dans la personne du Souverain, qui le constituë tel, et qui produit véritablement la Souveraineté."² Each individual in the society, or the society as a whole, is not formally invested with the authority that is ultimately exercised by the sovereign, but each individual and the aggregate of these individuals have the seeds of this authority within them. Each person has the right to dispose of himself and his actions as he sees fit. This is the right which the individual confers to the sovereign and which constitutes the latter's authority: "Si tous les membres d'une Société s'accordent à faire cette cession de leur droit à quelqu'un d'entr'eux, cette cession sera la cause immédiate et prochaine de la Souveraineté: il est donc clair qu'il y a dans chaque particulier, pour ainsi dire, des semences du pouvoir Souverain."³

Unlike Rousseau, however, Burlamaqui maintains that according to the nature of the social pact, the people

1. Ibid., p. 32.

2. Ibid., p. 31.

3. Ibid., pp. 33-34.

transfer this sovereignty which originally resides within them (or the seeds of which reside within them) to one or several persons chosen by them who become the sovereign. He criticizes those who distinguish between real sovereignty which is said to always remain with the people, and actual sovereignty which is given to a king. The people and the sovereign they have chosen cannot exercise sovereignty at the same time: "Dès qu'un Peuple a transféré son Droit à un Souverain, on ne sçauroit supposer sans contradiction, qu'il en reste encore le Maître."¹ When the people make a contract with the sovereign to submit to his will, they must faithfully abide by the conditions of that pact. He adds that the people always have the right to take back the sovereignty they have given, but that this right pertains to excessive abuse or failure on the part of the sovereign to uphold his part of the contract; "mais si l'abus n'est que médiocre, il est du devoir des Peuples de souffrir quelque chose, plutôt que de s'élever par la force contre leur Souverain."²

Now despite these conclusions, Burlamaqui's position on the question of who determines the ultimate destiny of the people is not as different from that of Rousseau as might be supposed. In spite of Burlamaqui's assertion that

1. Ibid., p. 39.

2. Ibid., p. 101.

the people do not have the right to take back sovereignty from the one to whom they have conferred it except in the case of manifest abuse on the part of the sovereign, he does not conclude that the people are powerless to decide who will govern them and what is for their own best good. The ultimate determination of the fate of the people rests with the person empowered to make the final decision on the matter. When it comes time to decide whether the abuse exercised by a sovereign is manifestly tyrannical or whether the people are but experiencing minor abuse, the result of human weakness to which all are subject, the one who is allowed to make that decision in the last analysis determines the lot of the people.¹ Who is the ultimate determiner of the will and destiny of the people? Burlamaqui, disagreeing with many others of the natural law school, poses and answers this question as would Rousseau:

Mais qui jugera si le Prince s'acquitte bien de ses fonctions, ou s'il gouverne tyranniquement? Le Peuple peut-il être juge dans sa propre cause? ... C'est sans contredit à ceux qui ont donné à quelqu'un un certain Pouvoir qu'il n'avoit pas par lui-même, à juger si celui qui en est revêtu, s'en sert conformément à la fin pour laquelle il lui a été confié.²

1. "Si l'on affirme que les sujets, même après le pacte de soumission, conservent le droit de juger si le souverain a fait de son pouvoir un usage conforme au bien public, le souverain ne l'est plus que de nom; c'est le peuple qui, jugeant en dernier ressort, détient le pouvoir suprême ou la souveraineté." (Derathé, Rousseau et la Science politique, p. 213.)

2. Droit politique, p. 105.

He adds that even if the people abuse the liberty given them to determine in the last analysis what is for their best good, "il y auroit encore beaucoup moins d'inconvénients, que de permettre tout impunément aux Souverains et de souffrir que toute une Nation périclisse, plutôt que de lui [the people] accorder le pouvoir de reprimer l'injustice de ses Gouverneurs."¹ Rousseau agrees: "Si de part ou d'autre l'abus est inévitable, il vaut encore mieux qu'un peuple soit malheureux par sa faute qu'opprimé sous la main d'autrui."²

By maintaining that sovereignty can be transferred from the people to their representatives, Burlamaqui remains part of the traditional natural law thought. By asserting that the people remain the ultimate determiners of their destiny, his final position is nearer to that of Rousseau than it is to many of his predecessors.³ Rousseau's position is more consistent than Burlamaqui's: it is the ultimate conclusion to the liberal emphasis on sovereignty put forth by Burlamaqui. Rousseau goes one step further in the direction of Burlamaqui's thought and gives the people not only the

1. Ibid., p. 107.

2. (LDM) Oeuvres complètes, III, p. 891.

3. Referring to his chapter on sovereignty, Gagnebin notes: "C'est un des chapitres les plus intéressants de son ouvrage car il y réfute avec beaucoup de précision et de clarté les idées de Hobbes, Puffendorf et Barbeyrac." (Op. cit., p. 101.)

ultimate determination of their will, but also the ultimate authority in government and the direction of that government itself. Burlamaqui cannot accept this last conclusion, due to his hostility to popular government. He concedes that the people should have the ultimate decision regarding their welfare, but that by their very nature they must be governed by those more capable of leading them. The foundation of sovereignty, he says, is based on this dependent relationship of the subjects to their sovereign: "Les vrais fondemens de la Souveraineté dans la personne du Souverain, sont la Puissance réunie à la Sagesse et à la Bonté, et que d'un autre côté, la Foiblesse et les Besoins dans la personne des Sujets, produisent naturellement la Dépendance."¹

Limits

Although Rousseau and Burlamaqui insist that sovereignty is absolute, they maintain that there are limits to the authority exercised by the sovereign. Burlamaqui and his predecessors submit that these limits are set by natural law: "Les penseurs de l'école du droit naturel admettent

1. Droit naturel, p. 151. He is careful to note, however, that sovereignty must also be based on the consent of those who are governed: "Il est vrai que ceux d'entre les hommes qui sont les plus sages, les plus vertueux et les plus courageux, sont par cela même plus propres à commander aux autres; mais il ne s'ensuit pas de là que la nature leur donne actuellement le droit de gouverner; il faut pour cela un acte positif de consentement de la part de ceux à qui l'on prétend commander." (Elémens, p. 81.)

tous, à l'exception de Hobbes, que l'autorité du souverain reste subordonnée à celle de la loi naturelle."¹ Rousseau, it will be remembered, also states that the sovereign is limited in his power by the natural law, but the principal limits he imposes on sovereignty derive from the nature of the social contract and the general will.

Rousseau says of the authority the sovereign has over the individual: "On convient que tout ce que chacun aliène par le pacte social de sa puissance, de ses biens, de sa liberté, c'est seulement la partie de tout cela dont l'usage importe à la communauté, mais il faut convenir aussi que le Souverain seul est juge de cette importance."² Despite this assertion that the sovereign alone is judge of what is best for the community interest, Rousseau insists that the general will cannot transgress the natural rights of the individual: "Le Souverain de son côté ne peut charger les sujets d'aucune chaîne inutile à la communauté; il ne peut pas même le vouloir."³ The reason why the sovereign cannot burden one individual with something not useful to the community, or

1. Derathé, Rousseau et la Science politique, p. 321.

2. (CS) Oeuvres complètes, III, p. 373.

3. Ibid. According to Derathé, Rousseau's notion of the sovereign's power being limited by the public good was influenced by Burlamaqui's similar assertion: "'La nature de la chose ne permet pas que l'on étende le pouvoir absolu au delà des bornes de l'utilité publique.'" (Rousseau et la Science politique, p. 344.)

even wish to do so, derives from the nature of the general will: this will, or the sovereign, must always be general; it cannot be particular or else it loses its rectitude. It is the common interest which characterizes the general will; the general will can no more make decisions regarding an individual than an individual can make decisions for the general will; all acts of sovereignty must treat all the citizens of the state the same, or must apply to all, not just to one individual:

On voit par-là que le pouvoir Souverain, tout absolu, tout sacré, tout inviolable qu'il est, ne passe ni ne peut passer les bornes des conventions générales, et que tout homme peut disposer pleinement de ce qui lui a été laissé de ses biens et de sa liberté par ces conventions; de sorte que le Souverain n'est jamais en droit de charger un sujet plus qu'un autre, parce qu'alors l'affaire devenant particulière, son pouvoir n'est plus compétent.¹

The general conventions made by the social pact must respect certain goods and rights which men bring with them into the social contract. These rights are directly relative to the rights which the individual has over his own person according to the natural law in the state of nature. For example, a person cannot entirely renounce his liberty and sell himself into slavery. Consequently, neither does the sovereign have the right to so deprive an individual of his liberty that he becomes a slave. When a body of people submit to sovereign authority, it is always with the

1. (CS) Oeuvres complètes, III, p. 375.

understanding that there are certain conditions or limitations attached to that authority: "Quand un peuple seroit assés stupide pour ne rien stipuler en échange de son obeissance sinon le droit de lui commander; encore ce droit seroit il conditionnel par sa nature."¹ This right is conditional because there are certain inherent rights accorded by the law of nature that cannot be alienated. To so alienate these rights would render invalid any contract made by a group of people: "Un Peuple qui se choisit un ou plusieurs Chefs et promet de leur obéir suppose evidemment qu'ils ne feront de sa liberté qu'il leur aliéne qu'un usage avantageux pour lui-même, sans quoi ce peuple étant insensé, ses engagemens seroient nuls."²

According to Burlamaqui, since the people by contract accord sovereignty to their leaders, the latter have no more right or power than that which is given to them:

La Souveraineté absoluë ne sçauroit donner au Souverain, plus de Droit que le Peuple n'en avoit originairement lui-même. Or avant la formation des Sociétés Civiles, personne, sans contredit, n'avoit le pouvoir de se faire du mal à soi-même ou aux autres; donc le Pouvoir absolu ne donne pas au Souverain le Droit de maltraiter ses Sujets.³

Not even the sovereignty exercised by God is arbitrary. His absolute dominion is founded upon immutable principles of

1. (CS 1st V) Oeuvres complètes, III, p. 315.

2. Ibid.

3. Droit politique, p. 41.

wisdom, justice and beneficence. Thus sovereignty exercised by the sovereign of a civil society must be of the same nature; it cannot be arbitrary or unjust: "Le Droit de commander, la Souveraineté, doit toujours être établie en dernier ressort sur une Puissance Bien-faisante, sans cela elle ne sauroit produire une véritable obligation."¹

The limits imposed upon the sovereign by natural law which afford men their basic rights are always tacitly implied in the social contract. Sometimes these limits can be written into the fundamental laws of the state. Burlamaqui favors this kind of formal stipulation of the limits of sovereignty as the best means of assuring natural rights. Because sovereigns are subject to the same weaknesses as the rest of mankind, Burlamaqui notes that by formally limiting sovereignty one actually strengthens it:

Les précautions que les Peuples prennent contre la foiblesse ou la malice inséparables de l'humanité, en limitant la Puissance de leurs Souverains, pour empêcher qu'ils n'en abusent, n'affoiblissent ou ne diminuent en rien la Souveraineté, mais au contraire, elles la perfectionnent, en reduisant le Souverain à la nécessité de bien faire, en le mettant, pour ainsi dire, dans l'impuissance de faillir.²

What if, despite the tacit or formal limitations placed upon the sovereign, the latter refuses to accord his subjects their natural rights? What if he begins to abuse

1. Ibid., pp. 42-43.

2. Ibid., pp. 48-49.

the sovereignty given him and exercises tyrannical power? What practical force can be used to abrogate the absolute power given to the sovereign? According to Rousseau, since sovereignty always remains with the people, this poses no problem in his political system. The people are always the ultimate authority in the state, and thus always have the right to ensure their own natural rights. If the government, or executive arm of the people begins to exercise arbitrary authority, the people being sovereign can depose those magistrates who constitute the government and who are but the servants of the people. If the whole system becomes corrupted the people can disband the social contract and regain their natural liberty:

Since violation of Rousseau's standards of political right will return men to a state of natural freedom by dissolving the social bond, there exists a theoretical sanction should the political community attempt to exceed its proper sphere of authority. Stated more bluntly, the principle of legitimacy is enforced by an unlimited right of revolution.¹

Burlamaqui advocates this same right to resist tyranny by popular revolt as the ultimate means of ensuring that the sovereign not rob the people of their natural rights: "Si le Souverain pousse les choses à la dernière extrémité, ... et qu'il paroisse évidemment qu'il a formé le dessein de ruiner la liberté de ses Sujets, alors on est

1. Roger D. Masters, The Political Philosophy of Rousseau (Princeton: The Princeton University Press, 1968), p. 322.

en droit de se soulever contre lui, et même de lui arracher des mains le Dépôt sacré de la Souveraineté."¹ Burlamaqui is emphatic in maintaining that sovereignty is absolute and that no one outside of the state has the right to limit the sovereign's authority over his subjects: "Une Puissance Etrangère n'a pas le droit de se mêler de ce qui se passe dans un autre Etat;"² however, if a people oppressed by their sovereign do not have the strength to overthrow him, they can legitimately seek outside help: "Lorsque tous les Sujets, ou une grande partie, gemissent sous l'oppression d'un Tyran, les Sujets d'un côté rentrent dans tous les Droits de la Liberté Naturelle, qui les autorise à chercher du secours où ils peuvent en trouver."³ Those who are petitioned by the oppressed people to help overthrow their sovereign not only have the right but the duty to do so if it is at all within their power by reason of the fact that it is a natural duty of the members of human society to help each other.

Now the right to overthrow and depose the sovereign in case of manifest tyranny belongs only to the majority of the people. The individual or a minority of the people have not this right. The individual can resist the sovereign if

1. Droit politique, p. 102.

2. Ibid., p. 200.

3. Ibid., p. 201.

the latter commands him to do something that is contrary to natural law, such as killing a man "dont l'innocence est claire comme le jour."¹ To resist the sovereign in such a case is not only a right but a duty: "Dans ces cas-là, il faut montrer un noble courage et résister de toutes ses forces à l'injustice, même au péril de tout ce qui peut nous en arriver. Il vaut mieux obéir à Dieu qu'aux hommes."² However, this right of the individual to disobey a manifestly unjust command of the sovereign does not extend to the right of overthrowing the sovereign. Burlamaqui was very cautious in advocating the right of resistance. When the majority overthrow their sovereign for tyranny, the evidence of that tyranny must be manifest:

Il faut bien remarquer ici, que lorsque nous disons que le Peuple est en droit de résister à un Tyran, ou même de le déposer, on ne doit pas entendre par le Peuple, la vile populace ou la canaille du País, ni une Cabale d'un petit nombre de séditieux, mais bien la plus grande et la plus saine partie des Sujets de tous les Ordres du Royaume. Il faut encore, comme nous l'avons dit, que la tyrannie soit notoire et de la dernière évidence.³

Nevertheless, he adds that it is not necessary that the subjects wait for the evidence of this tyranny to be so clear that the sovereign has already rendered the people powerless

1. Ibid., p. 132.

2. Ibid.

3. Ibid., p. 104. Since the general will implies a majority, Rousseau would agree that the majority alone has the right to make such a decision.

to resist. It suffices that the majority of the people feel that their security is at stake, that the sovereign marches, "pour ainsi dire, Enseignes déployées à la ruine de l'Etat."¹

Rousseau also maintains that sovereignty and the right to resist oppression pertains only to the majority (or totality) of the people. He too condemns factions and seditious groups within the state. According to his concept of the general will, his system provides the people with a different and more certain means of resisting tyranny than does Burlamaqui's, but the emphasis of the two writers is the same; both are concerned with the inherent rights of the people and want to assure the people of these rights against their possible usurpation by their leaders.

Government

Government, according to Rousseau, is the executive intermediary between the sovereign and the subjects which is charged with the execution of laws and the maintenance of liberty. As long as government is properly subordinated to the general will, it will never usurp power, "parce qu'alors il ne fait qu'exécuter la volonté générale."² This subordination is necessary because government by its

1. Ibid.

2. (FP) Oeuvres complètes, III, p. 484.

nature always tends to usurp power: "Comme la volonté particulière agit sans cesse contre la volonté générale, ainsi le Gouvernement fait un effort continuel contre la Souveraineté."¹

Rousseau states that the members of government are called magistrates, kings or governors and that the whole body is called the prince. When the social pact is made, the general will establishes by law the form of government and then chooses the officers who will execute the laws it enacts. These officers are the employers or servants of the people. The people in turn are both subjects and sovereign depending upon whether one considers them as a legislative body assembled to exercise the general will, or as individuals forming a part of the state. Thus, according to Rousseau, legislation is not a function of government, but represents the enactments of the sovereign general will. Legislative power is sovereign power but it is not a part of the government.

Now whereas Rousseau asserts that government is subordinate to the general will, that the legislative power deriving from this will is the most important part of sovereignty, he does not imply that government or executive power

1. (CS) Oeuvres complètes, III, p. 421. He is not very optimistic about the ability of the sovereign to withstand this aggression: "Tout corps depositaire de la puissance executive tend fortement et continuellement à subjuguier la puissance législative, et y parvient tôt ou tard." ([CGP] Oeuvres complètes, III, p. 977.)

is not important. In the Contrat social he states that whereas the people alone can enact laws, "il n'est pas bon que celui qui fait les loix les exécute, ni que le corps du peuple détourne son attention des vues générales, pour les donner aux objets particuliers."¹ Government is a very necessary creation of the sovereign, subservient to the latter, "but yet possessing a life of its own."²

Burlamaqui does not separate the legislative power of the sovereign from government, but he agrees that legislation is the most important part of sovereignty: "Entre les Parties essentielles de la Souveraineté, nous avons mis au premier rang le Pouvoir Législatif, c'est-à-dire le Pouvoir qu'a le Souverain de donner des Loix à ses Sujets. ... Ce Droit du Souverain fait, pour ainsi dire, le fonds de la Souveraineté."³ It is by means of the laws enacted by legislation that each subject is instructed in his civil duties, the extent of his natural liberty, "et comment il doit user de ses Droits pour ne pas troubler le Repos public."⁴

1. Oeuvres complètes, III, p. 1463.

2. Otto Gierke, Natural Law and the Theory of Society 1500 to 1800, trans. Ernest Barker (Cambridge: The University Press, 1950), p. 130.

3. Droit politique, p. 123.

4. Ibid., p. 152.

The right to legislate, declares Rousseau, should be accorded to all the citizens of the state, "car qui peut mieux savoir qu'eux sous quelles conditions il leur convient de vivre ensemble dans une même société."¹ He is not in favor of laws being enacted by representatives of the people: "Whenever Rousseau speaks of the people electing deputies to make laws for them, he always speaks as if they were abdicating the most essential of their political rights and duties."² For this reason he maintains that the elected representatives of the people cannot enact laws. All laws which the people themselves do not legislate or ratify are void. The English people, says Rousseau, are free only during the election of their representatives in parliament; after that they are slaves: "L'idée des Représentans est moderne: elle nous vient du Gouvernement féodal, de cet inique et absurde Gouvernement dans lequel l'espece humaine est dégradée, et où le nom d'homme est en deshonneur."³

The people alone have the right to legislate, but not having the wisdom or background to formulate the laws, they have need of someone wise who can formulate these laws--the legislator.⁴ The main difference in their thought

1. (CS) Oeuvres complètes, III, p. 424.

2. Plamenatz, Man and Society, I, p. 400.

3. (CS) Oeuvres complètes, III, p. 430.

4. Rousseau refers to the legislator in two general

is that Rousseau gives the people the ultimate task of legislating, while Burlamaqui leaves this task to the wise representatives of the people chosen for that purpose, as does Montesquieu who said: "Il [the people] ne doit entrer dans le gouvernement que pour choisir ses représentants, ce qui est très à sa portée."¹

The legislator, according to Rousseau, formulates laws but he does not actually enact or legislate them:

Celui qui redige les loix n'a donc ou ne doit avoir aucun pouvoir législatif; et le peuple même ne peut se dépouiller de ce droit Suprême, parce que selon le pacte fondamental il n'y a que la volonté générale qui oblige les particuliers et qu'on ne peut jamais s'assurer qu'une volonté particulière est conforme à la volonté générale à moins de la soumettre aux suffrages libres du Peuple.²

The legislator is a superior being who by his wisdom

contexts, the most common being in terms of "the legislator who provides the constitutional order with its basic law." (Carl J. Friedrich, "Law and dictatorship in the Contrat Social," Annales de Philosophie Politique: Rousseau et la Philosophie Politique [Paris: Presses Universitaires de France, 1965], p. 83.) He also implies that the legislator is the one who formulates laws for the people to sanction in the ordinary process of legislation (see (CS) Oeuvres complètes, III, p. 383). In this context the legislator or legislators are equivalent to the people's representatives spoken of by Rousseau in the Gouvernement de Pologne. However, there is little reference in his works to the legislator in this context due to the fact that Rousseau acknowledges that after the enactment of the fundamental laws, there is little need for legislation; the state should have few laws other than those contained in the original constitution deriving from the social pact. In all contexts, Rousseau insists that the legislator can only propose laws; the people alone must enact them.

1. Montesquieu, op. cit. [Bk. XI, Ch. 6], p. 167.

2. (CS 1st V) Oeuvres complètes, III, p. 314.

formulates laws the ordinary man is unable to conceive of, but he has no authority for the supreme authority is held by the people or the general will alone. It is by the general will that the people are always assured their liberty, and yet are directed by the wisest of laws, laws which a blind multitude could not formulate.

Burlamaqui, of course, has no notion of a legislator who is subordinate to the people. The legislator according to him is the sovereign. The sovereign alone makes and legislates laws. He has no need for the laws he formulates to be ratified or legislated by the people.

The Three Forms

Rousseau and Burlamaqui along with Montesquieu and their contemporaries conceived of there being three basic forms of government--democracy, aristocracy and monarchy. According to Burlamaqui, in both a democracy and an aristocracy, sovereign power resides only in the assembly of the people or their representatives in the case of an aristocracy; it cannot reside in the individual outside of the assembly. Monarchy differs from an aristocracy or a democracy in that sovereignty remains with the monarch at all times and places and is not restricted to assemblies: "Rome est par tout où se trouve l'Empereur."¹ Rousseau agrees with his concept as it pertains to a democracy: sovereignty

1. Droit politique, p. 59.

lies with the people assembled as a legislative body. He disagrees, however, in regard to a monarchy or an aristocracy: the monarch or the representatives of the people as constituted in an aristocracy are only the servants of the people; the people alone are sovereign.

Democracy. According to Rousseau, "il n'a jamais existé de véritable Démocratie, et il n'en existera jamais."¹ The kind of democracy he is referring to is that wherein the people are always assembled in order to exercise sovereign power, which of course is impossible. Such a government is bad due to the fact that it confounds the sovereign and government: "Le Prince et le Souverain n'étant que la même personne, ne forment, pour ainsi dire, qu'un Gouvernement sans Gouvernement."² Those who make laws must not execute them as well. Thus, although Rousseau insists that sovereignty must reside with the people, he is not in favor of democratic government. Such government does not suit imperfect men: "S'il y avoit un peuple de Dieux, il se gouverneroit Démocratiquement. Un Gouvernement si parfait ne convient pas à des hommes."³

There are numerous difficulties inherent in a democracy or even a modified democracy (since a true democracy

1. (CS) Oeuvres complètes, III, p. 404.

2. Ibid.

3. Ibid., p. 406.

has never existed). To begin with, the state must be small enough so that all the people know each other and that they are sufficiently few in number to assemble in one place; there must be a simplicity of manners and customs to avoid difficult discussions; there must be equality of rank and wealth; and finally there must not be any luxury or excessive riches because "il corrompt à la fois le riche et le pauvre, l'un par la possession l'autre par la convoitise."¹ He also acknowledges that a democracy is very unstable: "Il n'y a pas de Gouvernement si sujet aux guerres civiles et aux agitations intestines que le Démocratique ou populaire, parce qu'il n'y en a aucun qui tende si fortement et si continuellement à changer de forme, ni qui demande plus de vigilance et de courage pour être maintenu dans la sienne."²

Rousseau's remarks on the difficulty inherent in democratic government and the impossibility of implementing a pure form of such government, while indicating that the author is not in favor of democratic government because it cannot be effectively put into practice by imperfect beings, nevertheless, do not imply that he is not in favor of many of the ideals inherent in a democracy in spite of the difficulty they entail. Like many of his contemporaries

1. Ibid., p. 405.

2. Ibid.

he has a predilection for the equalitarian type government of the ancient republics: "Les esprits les plus éclairés avoient au XVIII^e siècle une préférence idéale pour la république égalitaire et particulièrement pour la république spartiate."¹ But also like many of his contemporaries, he acknowledges that a pure democracy is neither practical nor possible. His preference lies with a modified form of democratic government.

Regarding the origin of democratic government, Burlamaqui writes: "Quelques Peuples plus défiants que les autres ont placé la Souveraine Puissance dans la multitude elle-même, c'est-à-dire, dans tous les Chefs de famille assemblés et réunis dans un Conseil; et ce sont ces Gouvernements qu'on appelle Populaires ou Démocratiques."² He states that there are three conditions necessary for a democracy to exist and to function properly: there must be a certain time and place designated for the people to assemble; the plurality of votes must pass for the will of the community; there must be magistrates appointed to convoke the assembly of the people and carry out the will of the people when the latter are not assembled.³ These are all practical

1. Janet, Histoire de la Science politique, p. 473.

2. Droit politique, p. 56.

3. Ibid., p. 57.

conditions which are necessary for anything resembling a democracy to exist. There are elements of the concept which approach aristocratic or republican type government (e.g., the heads of families, instead of the whole family being present at the assembly), but they are elements which alone make possible the workability of a democracy according to Burlamaqui.

Even though he proposes certain necessary conditions to make a democracy workable, Burlamaqui shares Rousseau's dislike of democratic or popular government. He observes in comparing absolute, arbitrary government with democratic government: "Tels sont les Gouvernements absolus. Les Populaires ne valent pas mieux, et on peut dire qu'ils n'ont rien de bon que la liberté qu'ils laissent aux Peuples d'en choisir un meilleur."¹ He adds that absolute, monarchical government even has two advantages over popular government: there are intervals of time when a good prince rules as head of an absolute government, and there is greater force and promptitude in the execution of decisions made by one person.

Burlamaqui's dislike of popular government in large part derives from his dislike and distrust of the ignorant common people:

On ne sçauroit donc douter après tant d'expériences, que le Gouvernement Populaire ne soit le plus foible et le plus mauvais des Gouvernemens;

1. Ibid., p. 72.

certainement si l'on considère qu'elle est l'éducation du commun Peuple, son assujettissement au travail, son ignorance et sa grossièreté, l'on reconnoitra sans peine qu'il est fait pour être gouverné, et nullement pour gouverner les autres.¹

Democratic government, formed by the multitude, takes on the characteristics of the multitude: it is easily swayed one way or the other by a crafty minority; the multitude is slow to act and disorderly: "Ce n'est pas la liberté qui manque dans les Etats Populaires, il n'y en a que trop, elle y dégénère en licence."² Burlamaqui points to Poland as an example of the evils of a government become too democratic: "Elle est le jouët de ses Citoyens et des Etrangers, et très souvent un Champ de carnage, parce que sous l'apparence d'une Monarchie, c'est en effet un Gouvernement beaucoup trop Populaire."³

Like Rousseau, however, even while manifesting a dislike of democracy, Burlamaqui is nevertheless of the opinion that people should have some voice in government. He affirms that a government which allows participation by the people is more dynamic and just:

Dans les Etats où les Peuples ont quelque part au Gouvernement, tous les Particuliers s'intéressent au Bien public, parce que chacun selon sa qualité et son mérite, participe aux avantages des bons succès, ou se ressent des pertes. C'est là ce qui

1. Ibid., pp. 73-74.

2. Ibid., p. 73.

3. Ibid.

rend les hommes habiles et généreux, c'est ce qui leur inspire un amour ardent pour la Patrie, un courage invincible et à l'épreuve des plus grands revers.¹

The main difference between Burlamaqui's and Rousseau's concepts of popular participation in government centers around the degree of participation that each allows the people, and that degree is directly related to their general opinions on the people as treated in the preceding chapter of this study. Whereas Burlamaqui has little or no confidence in the people, but concedes that they should be allowed some participation in government, he concludes that this participation should be minor. Rousseau, on the other hand, while admitting that democratic or popular government is of itself not good, nevertheless concludes, because of his greater trust in the people or in a certain segment of them, that they should have a major role in determining their own affairs: the people alone are sovereign in the state, and only they are able to legislate or enact laws. Thus while their ideas on democratic government are quite similar, the degree of popular participation Rousseau and Burlamaqui will allow leads them to conceive of noticeably different ideal systems of government. This will be shown more fully in a succeeding section of this study treating the two authors' ideas on the best form of government.

1. Ibid., p. 71.

Aristocracy. According to Burlamaqui, when sovereign authority is remitted to "un Conseil, composé des principaux Citoyens, ... c'est le Gouvernement des Principaux, autrement le Gouvernement Aristocratique."¹ The sovereign power in an aristocracy only emanates from a convoked assembly of this council: "Les mêmes conditions, qui sont essentielles à la Constitution de la Démocratie, et dont nous venons de parler, concourent aussi pour établir une Aristocratie."² In fact, what Burlamaqui calls a democracy does not differ greatly from what he calls an aristocracy. The former is merely a more primitive kind of aristocracy which Rousseau himself calls one of the three kinds of aristocracy.³ Each individual member of the state in a democracy is not sovereign just as individuals in the aristocratic council are not sovereign. It is only when the council is assembled that it exercises sovereign power.

Burlamaqui distinguishes two kinds of aristocracies--hereditary and elective. He finds two major faults in hereditary aristocracy: "Elle inspire de l'orgueil à la Noblesse qui gouverne, et elle entretient entre les Grands et le Peuple une séparation, un mépris, et

1. Ibid., p. 56.

2. Ibid., pp. 57-58.

3. (CS) Oeuvres complètes, III, p. 406.

une jalousie qui cause de grands maux."¹ He is also critical of the hereditary nobility for its laziness, and the royal court for the many vices it engenders: "L'orgueil insupportable des grands, leur incorrigibilité invincible, et tous les maux de leur domination, viennent principalement de ce que la sincérité est à peine connue dans la cour des princes, et de ce que la dissimulation et la basse flatterie occupent la place de cette vertu."² His criticism, like Rousseau's, reflects the attitude and ideals of his native city. The only difference between their reproof of the nobility is one of degree: whereas the Genevan natural law professor to the sons of European noblemen and the Genevan Aristocracy voices moderate and infrequent criticism of the nobility and the royal court, Rousseau the son of a poor Genevan watch-maker, the outcast of society, raises his voice loud and long against the corruption of a rich and rotten hereditary aristocracy.

The aristocracy which Burlamaqui likes best is an elective aristocracy:

L'Aristocratie Elective a tous les avantages de la première, sans en avoir les défauts: Comme il n'y a nul privilège d'exclusion, et que la porte des Emplois est ouverte à tous les Citoyens, on n'y voit ni orgueil ni séparation; il y a au contraire une émulation générale entre tous les Citoyens qui

1. Ibid., p. 76.

2. Elémens, p. 118.

tourne toute au Bien public, et qui contribuë infiniment à conserver la liberté.¹

Burlamaqui undoubtedly has in mind his native city when he praises the merits of an elective aristocracy: "A l'époque de Rousseau, la République de Genève est de toute évidence une aristocratie, ou selon la formule chère à Burlamaqui une 'Aristocratie, tempérée par la démocratie.'"² He agrees with Rousseau that such a government is best for a medium sized country.

Rousseau's views on aristocracy are largely similar to those of Burlamaqui if one keeps in mind that Rousseau refers to aristocratic government, not sovereignty as Burlamaqui's concept implies. In the Lettres écrites de la Montagne, Rousseau contends: "Le meilleur des Gouvernements est l'aristocratique; la pire des souverainetés est l'aristocratique."³ Instead of two kinds of aristocracy, Rousseau distinguishes three different kinds: "Il y a donc trois sortes d'Aristocratie; naturelle, élective, héréditaire. La premiere ne convient qu'à des peuples simples; la troisieme est le pire de tous les Gouvernemens. La deuxieme est le meilleur; c'est l'Aristocratie proprement dite."⁴ What Rousseau calls a natural aristocracy is what Burlamaqui calls a

1. Droit politique, p. 76.

2. Derathé, Rousseau et la Science politique, p. 21.

3. Oeuvres complètes, III, p. 1564.

4. (CS) Oeuvres complètes, III, p. 406.

democracy or popular government, as a comparison of the following text with that by Burlamaqui on page 297 of this study will indicate: "Les premieres sociétés se gouvernerent aristocratiquement. Les chefs des familles délibéroient entre eux des affaires publiques; Les jeunes gens cédoient sans peine à l'autorité de l'expérience."¹

In the development of man from the original state of nature, the natural kind of aristocracy referred to here corresponded to the second stage of the state of nature, a pastoral or natural kind of simple society. It was an aristocracy wherein the old men were given first choice to be elected magistrates. Then came the pernicious change corresponding to the first civil society when magistrates began to be hereditary:

Les Chefs devenus héréditaires s'accoutumèrent à regarder leur Magistrature comme un bien de famille, à se regarder eux-mêmes comme les propriétaires de l'Etat dont ils n'étoient d'abord que les Officiers, à appeller leurs Concitoyens leurs Esclaves, à les compter comme du Betail au nombre des choses qui leur appartenoient, et à s'appeller eux mêmes égaux aux Dieux et Rois des Rois.²

This is why Rousseau feels that a hereditary aristocracy is the worst of all governments. His animosity toward it, one senses, is as deep-seated as his animosity toward all the evils of society which he lashes out against in the second Discours. Typical of his criticism of the hereditary

1. Ibid.

2. (DI) Oeuvres complètes, III, p. 187.

aristocracy is the following: "Mortelle ennemie des loix et de la liberté qu'a-t-elle jamais produit dans la plupart des pays où elle brille, si ce n'est la force de la Tyran- nie et l'oppression des peuples?"¹

Rousseau shares Burlamaqui's preference for elective aristocracy, due probably also to his admiration for the republican government of Geneva. He points out that there are three advantages of an elective aristocracy over a democracy: it distinguishes two powers--sovereignty and government (democracy, of course, combines the powers of sovereignty and government to its own detriment); with smaller numbers in the assemblies, affairs are discussed better and the state is better represented to foreign powers by venerable senators; magistrates who are elected and chosen for their ability are better able to lead the people: "En un mot, c'est l'ordre le meilleur et le plus naturel que les plus sages gouvernement la multitude, quand on est sûr qu'ils la gouvernent pour son profit et non pour le leur."² The way that one is sure that the elective aristocracy always governs for the benefit of the people is, of course, to ensure that the people always retain their sovereignty and that their elected officials always remain subordinate to them. Thus Rousseau's system happily retains all the

1. La Nouvelle Héloïse, II, p. 217.

2. (CS) Oeuvres complètes, III, p. 407.

advantages of government by an enlightened, elected minority while safeguarding against this minority's usurpation of power by having it always under the direction of the people.

Monarchy. Preferring an elective aristocracy, both Burlamaqui and Rousseau have little enthusiasm for a monarchical type of government. Burlamaqui prefers a monarchy to a democracy, but he acknowledges that the former type of government is not the best: "Or bien loin que sur ce pied-là les Etats où tout dépend le plus d'une seule volonté soient les plus heureux, on peut assurer que ce sont ceux dont les Sujets ont lieu le plus souvent de regretter la perte de leur indépendance naturelle."¹ Rousseau's dislike of kingship is even more pronounced:

Si nous étions rois, nous ne serions plus bienfaisants. Si nous étions rois et bienfaisants, nous ferions sans le savoir mille maux réels pour un bien apparent que nous croirions faire. Si nous étions rois et sages, le premier bien que nous voudrions faire à nous-mêmes et aux autres serait d'abdiquer la royauté et de redevenir ce que nous sommes.²

Rousseau admits that monarchy is the most vigorous type of government, but it also has the greatest empire over the people and the force of its administration ceaselessly turns to the disadvantage of the state and the public happiness. The king and his court usually mock the maxim which

1. Droit politique, p. 63.

2. Emile, p. 597.

says that the best means of commanding obedience from the people is to be loved by them: "Leur intérêt personnel est premierement que le Peuple soit foible, misérable, et qu'il ne puisse jamais leur résister."¹ Rousseau finds little consolation in the maxim that God gives bad kings to a people to punish them and as a consequence the people must obey without murmuring: "On sait bien qu'il faut souffrir un mauvais Gouvernement quand on l'a; la question seroit d'en trouver un bon."²

Rousseau submits there are three main disadvantages in monarchy: the monarch often falls short of the grandeur which should characterize his office; he usually chooses representatives ill-suited for their positions; and finally, the question of succession leaves the government unstable. If the question of succession is to be settled by elections, there are always intrigues and corruption upon the death of the king; hereditary succession, while avoiding the instability of elective succession, sometimes gives the state as king a child who turns out to be an imbecile or a monster.³

Despite his dislike of monarchy, Rousseau recognizes that in some countries this type of government is best. He

1. (CS) Oeuvres complètes, III, p. 409.

2. Ibid., p. 413.

3. Ibid., p. 411.

agrees with Montesquieu and Burlamaqui that a monarchy is best for very large countries. Thus for countries like Poland where for several reasons it is best that the people be ruled by a king, Rousseau advocates certain changes and conditions which will make monarchy a comparatively just kind of government. He proposes, for example, a balance of powers to limit the power of the king: "Le Roi, qui preside à tout continuera d'être à vie, et son pouvoir toujours très grand pour l'inspection sera borné par la chambre des nonces quant à la legislation et par le Senat quant à l'administration."¹ He specifies that the king cannot choose the senators of Poland. The king presides over the diet, but he has no choice in the selection of the people's representatives to the diet. He suggests that Poland discontinue the practice of electing the son of the king to succeed the latter because this practice could make the throne hereditary. If the crown becomes hereditary, "la Pologne peut dire adieu pour jamais à sa liberté."²

Since hereditary succession brings servitude to the people, and elective succession generally causes instability of government while the king is being chosen,³ Rousseau

1. (CGP) Oeuvres complètes, III, p. 994.

2. Ibid., p. 991.

3. "L'hérédité de la Couronne prévient les troubles, mais elle amène la servitude; l'élection maintient la liberté, mais à chaque règne elle ébranle l'état." (Ibid., p. 1029.

proposes to eliminate the disadvantages while combining the advantages of both the hereditary and elective systems. He suggests that the king be chosen by lot from among the senators for life, the most worthy citizens who have already earned the public trust. Soon after the death of the king, an elective assembly is convoked. The names of all the senators are put together and three of these are chosen by lot. These three names are then read aloud in the assembly, and a plurality of voices chooses the next king from this list of three. The fact that the three names chosen are picked from among the thirty-three best men of the nation eliminates the possibility of someone unworthy being chosen; the narrowing of this selection to one man by unanimous choice further ensures choosing a worthy king. The fact that the names are chosen by lot eliminates the possibility of intrigue among the candidates for election or by a foreign power.¹

One can note from the many conditions that Rousseau imposes on succession to the throne that he is concerned above all with the usurpation of power by the king. He is distrustful of the whole system of kingship, knowing the tyranny exercised by monarchs in his day. Thus when he concedes that a monarchy is necessary for certain countries, he advocates imposing many limitations and conditions to the system to ensure the people of their rights.

1. Ibid., pp. 1031-1032.

Concerning succession, Burlamaqui believes that the people should have ultimate choice in this regard: "Il seroit fort convenable que le Peuple se reservât formellement par une Loi fondamentale, le droit de juger en pareil cas."¹ He agrees with Rousseau that both hereditary and elective monarchies have their advantages and disadvantages, but unlike Rousseau he contends that hereditary monarchy in the last analysis is best: he points out that frequent elections of a king cause disputes and uncertainty as to the successor to the throne, while a hereditary succession brings more stability to the state; he believes that a hereditary monarch is more careful to rule wisely in the hope of having his children inherit the throne; and finally he suggests that a hereditary monarchy is better able to command the respect of the people, "par l'éclat de sa naissance, ... par les impressions du noble sang dont il sort, et par l'éducation qu'il aura reçue."²

Burlamaqui agrees that monarchy is best for large states: "Les grands Etats ont peine à s'accommoder des Gouvernemens Republicains, et une Monarchie sagement limitée leur convient mieux."³ He proposes that these limits be fixed by means of the constitution, and suggests various

1. Droit politique, p. 89.

2. Ibid., p. 83.

3. Ibid., p. 78.

things the sovereign must do to be a good king. He must learn his job well; he should avoid frivolous pleasures and seek wise men as counselors; he must know well the constitution of the state, and should set a good example for the people. His first objective is to seek the good of the people, to forget himself and work for their best interests. He must establish good laws and a system of education for the people; he must ensure that laws are not broken and punish offenders by means of a good police force; he should listen to the humble and those who receive ill-treatment from the ministers of the state.¹ The limits and proposals he advances to make monarchical government more effective suggest that whereas he is in favor of limiting the king's power, it is not to the extent that Rousseau advocates such limitations.

Balance of Powers

Burlamaqui and Montesquieu were two important advocates in the eighteenth century of the concept of separation of the powers of government. Harvey contends that the writers of the American Constitution were more influenced by Burlamaqui than by Montesquieu when they made this same concept an important part of their political system.² Gagnebin

1. Ibid., pp. 116-119.

2. Jean Jacques Burlamaqui, p. 142.

disagrees: "Montesquieu consacre une vingtaine de pages à cette question, alors que Burlamaqui n'y fait que de brèves allusions. ... Malgré M. Ray F. Harvey, ... s'il y a eu un vulgarisateur de cette théorie, c'est bien plus Montesquieu que Burlamaqui."¹ On the other hand, Gagnebin agrees with Harvey that Burlamaqui was one of the first to proclaim the principle of the balance of powers.²

Rousseau also "proposes a balance of powers in the true sense of the word, which he calls a gouvernement mixte."³ Derathé has shown that Rousseau does not have the same notion of separation of the powers of the sovereign as does Burlamaqui and Montesquieu because Rousseau maintains that sovereignty must always remain with the people (legislature) and cannot be divided.⁴ He speaks of a division of the executive power, not of sovereignty: "La balance des pouvoirs, telle que la conçoit Burlamaqui, équivaut à un partage ou à une division de la souveraineté, et nous savons que Rousseau s'est fait le champion de la souveraineté indivisible."⁵

Now in spite of this fact, Rousseau's notion of a balance of powers is quite similar to that of Burlamaqui.

1. Op. cit., p. 187.

2. Ibid., p. 188. Montesquieu, he said, was not clear on the subject, although he too conceived of the idea.

3. Cobban, op. cit., p. 82.

4. Rousseau et la Science politique, p. 301.

5. Ibid., p. 88.

The former, it is true, does not refer to a balance of the sovereign powers as does Burlamaqui, but the actual activities of government that the two men are speaking of balancing are largely similar.¹ Keeping in mind the basic difference in each writer's concept of sovereignty, their ideas on government are not radically different. If, as Gagnebin and Harvey assert, Burlamaqui was one of the first to develop the notion of a balance of powers, then it is possible that he influenced Rousseau, for their ideas on the subject offer more than one point in common.

Gagnebin has rightly observed that Burlamaqui does not distinguish three powers of the sovereign but eight.² Burlamaqui states that the principal parts of sovereignty include legislative power (the foundation of all the other powers), coactive power (the power to punish for misdeeds), judicial power, the power to survey religious and academic studies in the state and to establish public schools, the power to levy armies, the power to make treaties with foreign countries, the power to establish public ministers

1. Cobban has noted of Rousseau's concept of legislative sovereignty that "in the main it would be concerned simply with safeguarding the constitution; and practically everything that we would normally characterize as activities of government would be left to the executive, the authority of which was strictly limited." (Op. cit., p. 88.)

2. Op. cit., p. 187.

and officials, and the power to levy taxes and make money.¹ Nevertheless, despite his enumeration of eight parts or powers pertaining to sovereignty, Burlamaqui's concept of a balance of powers entails a balance of the three major powers of government--legislative, executive and judicial--which comprise the other eight powers referred to above.

Burlamaqui proposes that these three powers be vested respectively in the people,² the king and the senate:

Si l'on suppose que le Corps entier de la Nation se reserve le Pouvoir Legislatif, et celui de créer les principaux Magistrats, qu'elle donne au Roi le Pouvoir Militaire et exécutif etc., et qu'elle confie à un Senat composé des Principaux, le Pouvoir judiciaire, celui de mettre des Impots etc., l'on comprend bien que cela peut s'exécuter en différentes manières. ... Il se fait alors une espèce de partage des Droits de la Souveraineté, par un contract ou une stipulation reciproque entre les différents Corps de l'Etat. Ce partage produit un balancement de Puissance, qui met les différents Corps de l'Etat dans une dépendance mutuelle, qui retient chacun de ceux qui ont part à l'autorité Souveraine, dans les bornes que la Loi leur assigne, et qui fait ainsi la sureté de la liberté.³

Gagnebin observes that Burlamaqui's concept is the same as that of the "parti gouvernemental genevois. En proclamant l'indépendance des divers ordres ou pouvoir de l'Etat, il justifiait la position des syndics, du Petit et du Grand

1. Droit politique, pp. 52-54.

2. It is interesting to note here that Burlamaqui's concept of a balance of powers leaves the people with the legislative power the same as Rousseau does.

3. Droit politique, pp. 49-50.

Conseil de Genève, en les mettant sur le même pied que le Conseil général, c'est-à-dire l'ensemble des citoyens et bourgeois."¹ Cobban believes also that Rousseau's concept of the balance of powers is modeled after the latter's native city.²

Rousseau's notion of a balance of powers revolves around the tribunal or judiciary maintaining an equal balance between the legislative and executive power:

Ce corps, que j'appellerai Tribunat, est le conservateur des loix et du pouvoir législatif. Il sert quelquefois à protéger le Souverain contre le Gouvernement, comme faisoient à Rome les Tribuns du peuple, quelquefois à soutenir le Gouvernement contre le Peuple, ... et quelquefois à maintenir l'équilibre de part et d'autre."³

The same idea of a balance of power proposed by Burlamaqui is expressed here, although the latter maintains that these three powers are all a part of sovereignty whereas Rousseau claims that only the legislative power is sovereign. Equally different is Rousseau's notion that the tribunal has no constitutional authority, but, paradoxically, having no power can thus better impede the usurpation of power by the legislature or the government:

Le Tribunat n'est point une partie constitutive de la Cité, et ne doit avoir aucune portion de la puissance législative ni de l'exécutive, mais c'est

1. Op. cit., p. 184.

2. Op. cit., p. 85.

3. (CS) Oeuvres complètes, III, p. 454.

en cela même que la sienne est plus grande; car ne pouvant rien faire il peut tout empêcher. Il est plus sacré et plus révééré comme défenseur des Loix, que le Prince qui les exécute et que le Souverain qui les donne.¹

Rousseau cautions that the tribunat, whereas it is the best support of a good constitution, must not be allowed to become too powerful: "Pour peu de force qu'il ait de trop il renverse tout. ... Il degenerate en tyrannie quand il usurpe la puissance exécutive dont il n'est que le modérateur, et qu'il veut dispenser les loix qu'il ne doit que protéger."² Rousseau proposes that the best way to limit the power of the tribunal is to fix by law certain intervals during which it has no power to act. Not being a permanent body, the power of the tribunal to usurp power is thus greatly diminished.

Rousseau's concept of a balance of powers entails another aspect not proposed by Burlamaqui. The first concept referred to implies the same three powers spoken of by Burlamaqui. Rousseau in this first concept proposes establishing "des magistrats intermédiaires, qui, laissant le Gouvernement en son entier, servent seulement à balancer les deux Puissances et à maintenir leurs droits respectifs."³ The second method of balancing power constitutes a separation

1. Ibid.

2. Ibid.

3. Ibid., p. 414.

of the powers of government, or the executive powers only, which, of course, is lacking in Burlamaqui's notion of a balance of powers. Rousseau explains this division of executive powers as follows:

Quand la Puissance exécutive ne dépend pas assez de la législative, c'est-à-dire, quand il y a plus de rapport du Prince au Souverain que du Peuple au Prince, il faut remédier à ce défaut de proportion en divisant le Gouvernement; car alors toutes les parties n'ont pas moins d'autorité sur les sujets, et leur division les rend toutes ensemble moins fortes contre le Souverain.¹

Rousseau proposes this balance of powers when government becomes too strong, and the other balance (that of a tribunal as an intermediary between government and the sovereign) when the executive power becomes too weak: "Dans le premier cas on divise le Gouvernement pour l'affoiblir, et dans le second pour le renforcer."²

The Best Form

Burlamaqui and Rousseau maintain like Montesquieu that the question of the best form of government in the final analysis is a relative matter which depends upon many factors. Rousseau writes: "On a de tout temp beaucoup disputé la meilleure forme de gouvernement, sans considérer que chacune est la meilleure en certains cas, et la pire en d'autres. ... En général le gouvernement démocratique

1. Ibid., pp. 413-414.

2. Ibid., p. 414.

convient aux petits Etats, l'aristocratique aux médiocres, et le monarchique aux grands."¹ Burlamaqui concludes similarly:

Enfin si l'on demandoit encore, quel est entre les Gouvernemens le meilleur? Je répondrai, que tous les bons Gouvernemens ne conviennent pas également à tous les Peuples, et qu'il faut avoir égard en cela à l'humeur et au caractère des Peuples et à l'étendue des Etats. Les grands Etats ont peine à s'accommoder des Gouvernemens Republiquains, et une Monarchie sagement limitée leur convient mieux; mais pour les Etats d'une médiocre étendue, le Gouvernement qui leur est le plus avantageux, c'est une Aristocratic Elective, mêlée de quelques reserves, en faveur de la Généralité du Peuple.²

Burlamaqui notes also that regardless of the perfection of a certain form of government, because fallible men must administer it, "il sera toujours accompagné de quelques défauts. ... Ce Gouvernement doit passer pour le plus parfait qui parvient le mieux à sa fin, et qui renferme le moins d'inconvéniens."³

Rousseau, influenced by Montesquieu, emphasizes the role of climate on the relativity of government in a manner which Burlamaqui does not do. Rousseau writes: "Par l'effet

1. Emile, p. 595.

2. Droit politique, pp. 77-78. "Cette idée de la correspondance des gouvernements avec l'étendue des Etats et le génie des peuples est intéressante à noter sous la plume de Burlamaqui. Elle sera reprise par Montesquieu qui proclamera que les lois ont non seulement un rapport avec les moeurs et les manières d'une nation, mais encore avec la nature de son climat et bientôt vulgarisée par Jean-Jacques Rousseau." (Gagnebin, op. cit., p. 181.)

3. Droit politique, p. 66.

du climat le despotisme convient aux pays chauds, la barbarie aux pays froids, et la bonne politique aux régions intermédiares."¹ He acknowledges the source of his concept by stating: "La liberté n'étant pas un fruit de tous les Climats n'est pas à la portée de tous les peuples. Plus on médite ce principe établi par Montesquieu, plus on en sent la vérité. Plus on le conteste, plus on donne occasion de l'établir par de nouvelles preuves."² Besides maintaining that the form of government must be relative to the size of the country, Rousseau also asserts that it should be relative to the wealth of the state. Thus a democracy is suited for a small, poor state; an aristocracy should be of medium size, neither too rich, nor too poor; and a monarchy is suited for large and rich countries.³

Now, although Rousseau and Burlamaqui affirm that the best form of government is a relative matter, they nevertheless have in mind certain standards to which all governments must conform in order to best serve the people. These standards vary according to the nature of the country, but they tend toward a certain ideal, and that ideal for both

1. (CS) Oeuvres complètes, III, p. 416.

2. Ibid., p. 414.

3. Ibid., p. 415.

men approximates the mixed or balanced type of government referred to in the previous section of this study. "In the sphere of practical politics Rousseau consistently favours what the eighteenth century called gouvernement mixte, formed by a balance of councils combining both the aristocratic and democratic principles."¹

Rousseau maintains that countries should not be too big. It takes superhuman qualities to govern states that are very large. He notes that it is surprising that such a large country as Poland has not degenerated to despotism. Thus while he advocates a monarchical type of government for Poland because of its size, he proposes that the state decrease its boundaries, and that instead of having one massive government for the entire state, the whole should be divided into smaller federations: "Appliquez-vous à étendre et perfectionner le système des Gouvernemens fédératifs, le seul qui réunisse les avantages des grands et des petits Etats, et par là le seul qui puisse vous convenir."² On the other hand, a country cannot be too small or else it will lack solidity and will not be able to maintain itself. Thus a medium sized country offers the best opportunity for good government.

1. Cobban, op. cit., p. 45.

2. (CGP) Oeuvres complètes, III, p. 971.

Referring to the different forms of government Rousseau writes: "Après les avoir comparées par leurs avantages et par leurs inconvénients, je donne la préférence à celle qui est intermédiaire entre les deux extrêmes et qui porte le nom d'Aristocratie."¹ In this same work he makes clear that the model he follows in delineating this form of government is the government of Geneva:

Que pensiez-vous, Monsieur, en lisant cette analyse courte et fidelle de mon Livre? Je le devine. Vous disiez en vous-même; voilà l'histoire du Gouvernement de Genève. C'est ce qu'ont dit à la lecture du même Ouvrage tous ceux qui connoissent votre Constitution. En effet, ce Contract primitif, cette essence de la Souveraineté, cet empire des Loix, cette institution du Gouvernement; ... n'est-ce pas trait pour trait votre République, depuis sa naissance jusqu'à ce jour? J'ai donc pris votre Constitution, que je trouvois belle, pour modele des institutions politiques.²

He adds that the government of Geneva he uses as a model in the Contrat social is not without faults and for this reason he wrote into his work concepts which would rectify these faults. Rome and Sparta are also his models, but they too are basically the republican government referred to here. According to the heads of the government of Geneva during Rousseau's time, that government was characterized as follows:

1. (LDM) Oeuvres complètes, III, p. 808.

2. Ibid., p. 809. Just before this passage, Rousseau also states that Rome had "le meilleur Gouvernement qui ait existé, ... la police la plus favorable à la bonne constitution de l'Etat." (Ibid.)

Notre République est une République mixte, dont le gouvernement est mêlé de Démocratie et d'Aristocratie élective. On dit Aristocratie élective, parce qu'il n'y a point de droit héréditaire dans le Gouvernement, tous les emplois se donnent par élection, et tous les citoyens sont éligibles, si bien que c'est la Démocratie qui fournit à l'Aristocratie n'y ayant aucun des citoyens qui ne puisse parvenir à la première Magistrature par ses talens et par ses services. ... On voit donc que notre gouvernement n'est pas une pure Démocratie, ni une pure Aristocratie, mais une Aristo-Démocratie.¹

This is Burlamaqui's model of an ideal government; he prefers "une Aristocratie tempérée par la Démocratie, par quelques privilèges en faveur de la Généralité du Peuple."² Similarly, Rousseau's preference is "un gouvernement démocratique sagement tempéré."³ The only difference lies in their notions of the role of the people, alluded to in the different wording of their respective texts. Burlamaqui advocates giving the people "quelques privilèges" in government. Rousseau gives them a greater voice indicating that a democracy, "sagement tempéré" (in reality an elective aristocracy in which the people have sovereign authority), is the best of governments.

Like Rousseau, Burlamaqui finds his model for the best form of government in a moderate kind which avoids

1. Gagnebin, op. cit., p. 56. Gagnebin notes that Burlamaqui, a member of the governing body of Geneva at this time, had an influence in the formulation of these concepts: "Comment ne point voir dans ce passage du Mémoire des Conseils l'influence du professeur de droit naturel?" (Ibid.)

2. Droit politique, p. 77.

3. (DI) Oeuvres complètes, III, p. 112.

the extremes of a pure democracy and an absolute monarchy: "C'est donc dans cet heureux tempéramment qu'il faut prendre l'idée générale d'un bon Gouvernement. Il est visible que celui qui fuit les extrêmités ... laisse en même tems au Peuple des suretés suffisantes qu'on ne s'écartera jamais de cette fin."¹ Burlamaqui contends, though, that an absolute monarchy in the hands of a wise and virtuous prince would be the best form of government: "L'ordre, la diligence, le secret, la promptitude dans l'exécution, la subordination, les objets les plus grands, les exécutions les plus heureuses en sont les effets assurés. ... Un si beau règne est le Siècle d'or."² Men are seldom so wise and virtuous, however, especially those occupying such a high office. The very nature of absolute monarchy is such that even good kings are tempted by flattery and pride to abuse the power they have received. An absolute monarchy is thus not the best form of government even for a large state.

Burlamaqui's concept of the best type of government centers around two forms of government each of which reflects his notion of moderate or intermediate government. For medium sized countries he proposes an elective aristocracy and for large countries a limited monarchy with a balance of powers:

1. Droit politique, p. 69.

2. Ibid., p. 70.

La première consiste à mettre la Souveraineté dans un Conseil tellement composé ... que l'on puisse moralement s'assurer qu'il n'aura d'autres intérêts que ceux de la Société: ... c'est ce que l'on voit heureusement pratiqué dans la plupart des Républiques. La seconde, c'est de limiter par des Loix fondamentales la Souveraineté du Prince, dans les Etats Monarchiques, ou de ne donner à la Personne qui jouit des honneurs et du titre de la Souveraineté, qu'une partie de l'autorité Souveraine, et de mettre l'autre dans des mains séparées."¹

By thus limiting the power of the sovereign, the people are guaranteed their liberty; and the sovereign, having a more precise knowledge of the limits of his power, is better able to serve the people. As examples of the form of mixed government he is referring to, Burlamaqui cites Rome, Sparta and England.²

In regard to an elective aristocracy, Burlamaqui proposes putting sovereignty in the hands of "un Conseil assez nombreux, pour renfermer dans son sein les intérêts les plus importants de la Nation."³ He suggests that this council be comparatively small, that the wisest and most virtuous citizens of the state be elected to its ranks, and that its authority be limited by according the people a portion of sovereignty. Burlamaqui cautions, however, that the part of sovereignty accorded to the people or the control they shoul

1. Ibid., p. 74.

2. Ibid., p. 76.

3. Ibid., p. 77.

have in regard to their government must be limited: "Ce qu'il y a de plus délicat dans ces Gouvernemens, c'est de les tempérer de manière qu'en même tems que l'on assure au Peuple sa liberté, en lui donnant quelque part au Gouvernement, on ne pousse pas ses suretés trop loin, et que le Gouvernement n'aproche pas trop du Démocratique."¹ This emphasis marks the main difference between his concept and Rousseau's. The latter asserts that the people should retain all of the sovereignty, not just a part of it, and that the legislative power should be left in their hands.

Burlamaqui's limited monarchy and elective aristocracy both entail the notion of limiting authority by the balancing of powers according to fundamental laws. "A l'égard des Monarchies, il convient, par exemple, que le Pouvoir militaire, le Pouvoir législatif, et le pouvoir de lever des subsides, soient remis en différentes mains, afin qu'on ne puisse pas en abuser facilement."² The monarch retains the sovereignty, but the constitution specifies that certain governmental powers usually exercised by an absolute sovereign, be remitted into the hands of others. The elective aristocracy or mixed republic also has different functions of government remitted into different hands. The major difference between this government and a limited monarchy is that

1. Ibid.

2. Ibid., p. 74.

sovereignty lies not with the king alone, but the united orders of the state:

Ce qui fait le caractère essentiel des Républiques mixtes ou composées, et qui les distingue des Gouvernemens simples, c'est que les différens Ordres de l'Etat, qui ont part à la Souveraineté, possèdent les Droits qu'ils exercent par un titre égal, c'est-à-dire, en vertu de la Loi fondamentale, et non pas à titre de simple commission, comme si l'un n'étoit que le Ministre ou l'Exécuteur de la volonté de l'autre.¹

International Relations

The writings of Burlamaqui and Rousseau on the international relations between sovereign states are an important part of their political thought. Burlamaqui devotes a large portion of his Principes du droit politique to the external relations of nations, especially to the subject of war. At the end of the Contrat social, Rousseau makes reference to a political work, a continuation of the principles set down in his major political writing, "qui comprendroit le droit des gens, le commerce, le droit de la guerre, et les conquêtes, le droit public, les ligue, les négociations, les traités, etc."² He never wrote the work, but he treats these subjects in his various writings, sometimes at length, but mainly by way of passing reference to them; nevertheless these remarks are numerous and extensive enough to give a good indication of what his ideas on international

1. Ibid., p. 62.

2. (CS) Oeuvres complètes, III, p. 470.

relations are. The rights established in the Contrat social, states Windenberger, "ne sont des droits ni français ni américains, mais des droits universels, supérieurs à toute idée de nation, parce qu'ils sont le privilège de l'humanité partout où elle se rencontre. Le Contrat social postulait le Contrat international."¹

The Law of Nations

According to Dickinson, there were during the seventeenth and eighteenth centuries three schools of thought on the law of nations, respectively the naturalists, the positivists, and the eclectics:

The philosophical or pure law of nature school held that the law of nations was nothing more than the law of nature applied to separate states in a state of nature. ... The positivists or historical school contended that the principles underlying customs and treaties constituted a positive law of nations, distinct from the natural law and of superior practical importance. The eclectics or Grotians, as they are sometimes called, took an intermediate position, retaining Grotius' distinction between the natural and the voluntary law of nations, while treating the two as about equal in importance.²

Based on this summary or judgment, Burlamaqui might be put mainly with the first group, whereas the more polemic Rousseau does not fit very well in any of these schools,

1. J.-L. Windenberger, Essai sur le système de politique étrangère de J.-J. Rousseau: la république confédérative des petits états (Paris: Alphonse Picard et Fils, Editeurs, 1900), p. 49.

2. Edwin Dewitt Dickinson, The Law of Nations (New York: McGraw-Hill Book Company, Inc., 1929), p. 5.

although there are elements of his concept which are similar to those of Burlamaqui.

Burlamaqui writes: "Le Droit Naturel et le Droit des Gens ne sont au fond qu'une seule et même chose, et ils ne diffèrent que par une dénomination extérieure."¹ The exterior denomination he refers to is the application of natural law either to nations alone or to all men on a universal scale. Like Hobbes, he divides natural law into two categories: "La Loi Naturelle, dit fort bien Hobbes se divise en Loi Naturelle de l'homme, et Loi Naturelle des Etats; et cette dernière est ce que l'on nomme Droit des Gens."² Thus Burlamaqui defines the law of nations as follows:

Le Droit des Gens, proprement ainsi nommé et considéré comme une Loi qui émane d'un Supérieur, n'est autre chose que le Droit Naturel lui-même, appliqué, non aux hommes envisagés simplement comme tels; mais aux Peuples, aux Nations, aux Etats ou à leurs Chefs, dans les relations qu'ils ont ensemble, et dans les intérêts qu'ils ont à ménager entr'eux.³

Being natural law itself, the law of nations is thus obligatory for all people and nations.

On another occasion Burlamaqui refers to these two kinds of natural laws as "un droit naturel primitif, ou

1. Droit naturel, p. 221.

2. Ibid.

3. Ibid.

premier, et un droit naturel second."¹ He calls the law of nations a second natural law inasmuch as this law follows the first or emanates from it in the same manner that the civil society follows the natural state. The law of nations supposes the establishment of the civil society and thus although its tenets are the same as the natural law applying to man in the state of nature, it can in this respect be regarded as part of a greater whole: "Il paroît de là, que le droit des gens est une partie du droit naturel."²

Those relationships which apply to men in the natural state, pertain to states according to the law of nations. Since the natural state of man is a state of society and peace, "le Droit des Gens n'est autre chose que la Loi générale de la Sociabilité, appliquée non aux Particuliers qui composent la Société, mais aux hommes considérés comme formant entr'eux différens Corps, que l'on appelle Etats ou Nations."³ According to the law of sociability in the natural state men must treat each other as equals, keep their word and repay any damage or trespass committed against another. The same principle applies to nations according to the law of nations. All countries are

1. Elémens, p. 23.

2. Ibid.

3. Droit politique, p. 179.

naturally equal and independent one from another. They must live in peace: "Elles ne doivent se faire aucun mal, et au contraire, reparer celui qu'elles pourroient avoir fait."¹ However, according to the natural law they have the right to defend themselves against an aggressor. Also according to this law they must keep their word when given by way of treaty or alliance.

Having thus defined the law of nations and its relationship to natural law, Burlamaqui then distinguishes two kinds of laws of nations. The first kind is that which has already been referred to, "un Droit des Gens universel, de nécessité, obligatoire par lui-même, qui ne diffère en rien du Droit Naturel."² The second kind cannot come under the definition of natural law:

Il y aura ensuite un autre Droit des Gens, que l'on pourra nommer arbitraire, et de liberté, comme n'étant fondé que sur quelque Convention ou expresse ou tacite; dont l'effet n'est pas par lui-même universel; et qui n'oblige que ceux qui s'y sont volontairement soumis, et seulement pour aussi long-tems qu'ils le veulent, puisqu'il dépend toujours d'eux de le changer ou de le révoquer.³

He adds that the force of such a law of nations is derived in the last analysis from the natural law "qui ordonne que

1. Ibid., p. 180.

2. Droit naturel, p. 225.

3. Ibid.

l'on soit fidèle à ses engagements."¹ However, he disagrees with Grotius that this droit des gens is universally obligatory: "Ce prétendu Droit des Gens, distinct du Droit Naturel, et qui ait néanmoins par lui-même la force d'obliger ... est une supposition destituée de fondement."²

Burlamaqui makes it plain that he accepts the existence of this law of nations only as a conciliatory admission of Grotius' concept: "Ces remarques nous donnent lieu de conclurre, que l'on pourroit peut-être tout concilier, en distinguant deux espèces de Droit des Gens."³ The second kind holds the same relationship to natural law as does civil law. Both the civil law and the second law of nations obligate only those people or nations who freely consent to being governed by them. They derive their force from the natural law inasmuch as they are in harmony with it, and thus may be said to be very closely related to it; however, not being universally obligatory, they cannot be strictly called natural law for universality is the test of natural law.

Derathé is of the opinion that Rousseau's notion of the law of nations is similar to that of Grotius, and in opposition to that of many others of the natural law school:

1. Ibid.

2. Ibid., p. 223.

3. Ibid., p. 225.

"Rousseau rejette donc formellement la théorie de Hobbes, Pufendorf, Barbeyrac et Burlamaqui, lesquels sont d'accord pour faire du droit des gens une simple dépendance du droit naturel."¹ There is validity in this generalization by Derathé; however, it will be shown that Rousseau does not entirely reject the notion of a law of nations which is part of natural law despite many of his statements which seem to so indicate.

Referring to the transition from the natural to the civil state, Rousseau writes: "Le droit civil étant ainsi devenu la règle commune des citoyens, la Loy de Nature n'eut plus lieu qu'entre les diverses Sociétés, où, sous le nom de Droit des gens, elle fut tempérée par quelques conventions tacites."² Here he seems to admit a law of nations which while being tempered by tacit conventions, is the same as the natural law. It is the law which applies to "les Corps Politiques restant ainsi entr'eux dans l'Etat de Nature."³ The same independence which characterizes men in the state of nature applies to nations. The same laws of

1. Rousseau et la Science politique, pp. 396-397. He cites a letter by Rousseau dated November 5, 1760 to Malesherbes to support his point: "'Le droit naturel, dit-il, est le même pour tous les hommes. ... Mais le droit des gens, tenant à des mesures d'institutions humaines et qui n'ont point de terme absolu, varie et doit varier de nation à nation.'" (Ibid., p. 396.)

2. (DI) Oeuvres complètes, III, p. 178.

3. Ibid.

nature which should be the equitable measure of men's relationships with each other, apply to nations in their relationships with other nations. There exist immutable standards of right: "Vous trouverez partout les mêmes idées de justice et d'honnêteté, partout les mêmes notions de bien et de mal."¹ Rousseau criticizes Montaigne for implying the contrary: "O Montaigne! toi qui te piques de franchise et de vérité, sois sincère et vrai, si un philosophe peut l'être, et dis-moi s'il est quelque pays sur la terre où ce soit un crime de garder sa foi, d'être clément, bienfaisant, généreux; où l'homme de bien soit méprisable, et le perfide honoré."² These standards are those of the natural law; applied to nations they constitute a law of nations which is part of the natural law.

Nevertheless, in the same manner that Rousseau rejects a natural law based on reason alone as professed by many of his contemporaries, he also rejects "ce qu'on appelle communément le droit des gens. ... Faute de sanction, ses loix ne sont que des chimères plus foibles encore que la loi de nature."³ The latter is superior to the former in that it at least speaks to the heart of the individual, whereas "le droit des gens n'ayant d'autre garant que

1. Emile, p. 351.

2. Ibid., p. 352.

3. (EASP) Oeuvres complètes, III, p. 610.

l'utilité de celui qui s'y soumet, ses décisions ne sont respectées qu'autant que l'intérêt les confirme."¹ He objects that what is commonly called the law of nations is nothing but the arbitrary conventions established by nations among themselves, and contends, like Burlamaqui, that this kind of law of nations cannot be universally obligatory as Grotius maintained. Regarding the laws of nations which are in harmony with natural law, he maintains that these laws are recognized by nations only to the extent that their own interest and utility approve such recognition. Thus, lacking any universal sanction or recognition by nations, these laws, though existing according to the natural law, "ne sont que des chimères."² A law of nations which is supposed to be universally obligatory, but because of lack of universal sanction or recognition is not, is really only fantasy, according to Rousseau. Thus by rejecting the commonly accepted notion of the law of nations as conceived and observed by the political bodies of his day, Rousseau does not necessarily reject the existence of just laws deriving from the natural law which should be observed by all nations.

Rousseau's main objection to the law of nations as accepted by the powers of his time is that by its precepts

1. Ibid.

2. Ibid.

all kinds of aggression and crime are excused by nations professing to act in accordance with this law. Each country being a law unto itself is not held in check as men are in the civil society: "D'homme à homme, nous vivons dans l'état civil et soumis aux lois; de peuple à peuple, chacun jouit de la liberté naturelle; ce qui rend au fond notre situation pire que si ces distinctions étaient inconnues."¹ The situation is worse under these circumstances because the natural liberty which the civil law has as its purpose to ensure for the individual is put in peril by the aggression of belligerent states who are not forced to keep the law but who force their subjects to make war against and subjugate other nations. The solution to the problem is to give to the law of nations the same force which the natural law receives from the general will: "Si les lois des nations pouvaient avoir, comme celles de la nature, une inflexibilité que jamais aucune force humaine ne pût vaincre, la dépendance des hommes redeviendrait alors celle des choses."² When nations like individuals submit by pact to be governed by the general will, "alors la grande ville du monde devient le corps politique dont la loi de nature est toujours la volonté générale, et dont les états et peuples

1. Ibid.

2. Emile, p. 70. He explains the two kinds of dependencies referred to to here as follows: "Il y a deux sortes de dépendances; celle des choses, qui est de la nature; celle des hommes, qui est de la société." (Ibid.)

divers ne sont que des membres individuels."¹ Such a law of nations would have the power to enforce obedience to it. The solution to the problem is confederations of states "qui, laissant chaque Etat son maître au dedans, l'arment au dehors contre tout agresseur injuste."²

Confederation of States. Rousseau proposes the confederation of the smaller states of Europe to remedy the same evils eliminated by the social contract: "Par le Contrat Social, Rousseau s'est efforcé de bannir le despotisme et l'inégalité de la société civile, il doit de même par le Contrat International s'efforcer de bannir la guerre de la politique internationale."³ It is likely that his concept was influenced by the political union of his homeland: "La Suisse formait une confédération dont J.-J. Rousseau avait le modèle sous les yeux."⁴ However, he was more directly influenced in his concept by the Abbé de Saint-Pierre.

Although borrowing many of the Abbé de Saint-Pierre's ideas, Rousseau criticizes his plan as being impractical: "Convenons que dans tous les projets de cet honnête homme il voyoit assés bien l'effet des choses quand elles seroient établies mais qu'il jugeoit comme un enfant des moyens de

1. (DI) Oeuvres complètes, III, p. 245.

2. Emile, p. 596.

3. Lassudrie-Duchène, Jean-Jacques Rousseau et le Droit des Gens, p. 448.

4. Windenberger, op. cit., p. 209.

les établir."¹ The Abbé de Saint-Pierre had counted on the goodwill of the European kings to establish a federation to make peace perpetual. Rousseau maintains on the contrary, that the European princes seek their own selfish interests and are the causes of the continual wars of Europe. They have no interest in establishing peace. The only way to get the powerful nations to stop invading the smaller states of Europe is to establish a confederacy among these smaller nations and force the larger nations to stop their conquest: "Il ne faut pas écrire des livres mais lever des troupes."² The Abbé de Saint-Pierre's plan to unite Europe, according to Rousseau, was essentially the same as that of Henry IV. During Rousseau's lifetime the plan would be absurd or impossible, although he concedes that during the sixteenth century the project might have been practical.

The purpose of Rousseau's confederation is essentially the same as that of the social contract: "It seeks to do for the whole community, and for all communities concerned, that which the Social Contract has already done for the individual himself; to complete the work of drawing man from the state of nature which the Contract had begun."³

1. (EASP) Oeuvres complètes, III, p. 595.

2. Ibid.

3. C. E. Vaughan, The Political Writings of Jean Jacques Rousseau (New York: John Wiley and Sons, Inc., 1962), p. 97.

However, the nature of the pact made by a confederation differs from that which Rousseau treats in the Contrat social. Windenberger explains this difference to be that also between a federation and a confederation. The former implies loss of sovereignty to the federating states whereas the latter does not: "Tandis que l'Etat fédéral entraînait la fusion des peuples, la Confédération respecte, au contraire, toutes les distinctions nationales."¹ Confederation lies somewhere between a simple alliance and federation: the latter leads to dissolution of sovereign states while simple alliances form unions which are too weak and vague. Confederation avoids the imperfections of both systems.

According to the social contract each individual submits to the authority of the general will which alone is sovereign. According to Rousseau's notion of confederation, each nation retains its own sovereignty, thus total submission is not implied as it is in the social contract. A common tribunal is set up to regulate the relations between the confederating states which does not in any way diminish the powers of sovereignty of each state, "mais les affermira au contraire, et les rendra plus assurés ... en garantissant à chacun, non-seulement ses Etats contre toute invasion étrangère, mais encore son autorité contre toute rébellion de ses

1. Winderberger, op. cit., p. 210.

Sujets."¹ An alternating presidency is given to the confederation which ensures it from usurpation of power. Rousseau's concept of the state allows neither the total submission of the sovereign authority of the state to other states nor the total amalgamation of one people with another: "A ses yeux, chaque peuple a une physionomie spéciale, un caractère propre, qu'il doit soigneusement conserver."²

Nevertheless, the formation of a confederacy implies certain things in common which nations must have to make workable such a union. Rousseau states that a confederation is possible among the nations of Europe because they all have similar morals, letters, customs and religion. Each nation has natural boundaries which make designs for a European monarchy foolish, and besides these nations would not submit to domination by a universal authority; however, the similar interests of these states would make possible a confederacy. Each nation would be so equal in this union that it could not be dominated by other states, but the confederation would have the coercive force to stop aggression and make nations submit to its authority.³

Rousseau's plan for a confederation of the smaller states of Europe is mainly a practical one. It is more

1. (EASP) Oeuvres complètes, III, p. 583.

2. Windenberger, op. cit., p. 213.

3. Ibid., p. 574.

reasonable to suppose that smaller nations out of self interest would unite for common defense than to think they would surrender their sovereignty for a federal alliance. The concept of a confederation entails mainly a union of national militias only when the need arises: "Pour permettre à la Confédération de protéger efficacement les droits de ses membres, les petits Etats devront avoir des milices, qui pourront unir leurs forces respectives pour la défense commune, toutes les fois que la nécessité s'en présentera."¹ When the common peril is over, these military forces would return to their respective countries. The plan is based on self interest, not on mistaken ideals which suppose men and rulers to be other than they are:

On doit bien remarquer que nous n'avons point supposé les hommes tels qu'ils devroient être, bons, généreux, désintéressés, et aimant le bien public par humanité; mais tels qu'ils sont, injustes, avides, et préférant leur intérêt à tout. La seule chose qu'on leur suppose, c'est assez de raison pour voir ce qui leur est utile, et assez de courage pour faire leur propre bonheur.²

Burlamaqui, influenced also by the concept of an alliance of states such as existed in his native country, has much the same ideas as Rousseau in regard to a confederation of smaller states: "Pour les Etats composés qui se forment par la confédération perpétuelle de plusieurs Etats, il faut remarquer, que cette confédération est le seul moyen

1. Windenberger, op. cit., p. 224.

2. (EASP) Oeuvres complètes, III, p. 589.

par lequel plusieurs petits Etats, trop foibles pour se maintenir chacun en particulier contre leurs ennemis, puissent conserver leur liberté."¹ He also agrees that this union should be of such a nature that each state does not have to surrender its sovereignty:

Ces Etats confédérés s'engagent les uns envers les autres à n'exercer que d'un commun accord certaines parties de la Souveraineté, sur-tout celles qui concernent leur défense mutuelle contre les ennemis du dehors. Mais chacun des Confédérés retient une entière liberté d'exercer comme il le juge à propos, les Parties de la Souveraineté dont il n'est pas fait mention dans l'Acte de Confédération, comme devant être exercées en commun.²

Such, says he, is the nature of the confederation of Swiss States and the united Low Countries. The union is one made by express convention designed to protect each state from assault by enemy nations.

While Burlamaqui's notion of a confederation of states is similar to that of Rousseau, it does not occupy the same place of importance in his thought that Rousseau's does in his ideas on international relations. Burlamaqui devotes only a page and a half to the concept. He places more emphasis on the law of nations as the best means to deter war and make it less inhumane.

1. Droit politique, p. 65.

2. Ibid.

War

There are major differences in Rousseau's and Burlamaqui's ideas on war, probably for the reason that Burlamaqui was greatly influenced by Grotius, the well known authority on the subject, while Rousseau was not to any great extent. These differences are more apparent than other more subtle differences in their political thought due to the fact that Rousseau rejects Grotius' major tenets on war and sets out to refute them; by so doing, he also refutes many of the principles on war which Burlamaqui maintains. Burlamaqui's unwillingness to depart very far from Grotius' ideas on war is another indication of his close ties to the natural law philosophy of his predecessors, and puts him in contrast with Rousseau who is not as reluctant to discard many of the principles of the natural law theorists.

Burlamaqui maintains the commonly accepted notion that war is a state of hostility existing between all the members of the warring states. He declares in answer to the question of whether the right of war permits killing those not bearing arms: "Je réponds qu'à l'égard de tous ceux qui sont Sujets, la chose est incontestable; Ce sont là les Ennemis principaux, et l'on peut exercer sur eux tous les actes d'hostilité en vertu de l'état de Guerre."¹ Like Grotius, he suggests that clemency should be used in the

1. Droit politique, p. 230.

treatment of old men, women and children, that the rights of war do not necessitate killing them (that is if they are not bearing arms); nevertheless, "lorsque le feu de l'action emporte le Soldat comme malgré lui, et nonobstant les ordres des Supérieurs, à commettre ces actes d'inhumanité, ... alors on doit plutôt regarder ces maux-là comme des malheurs et comme des suites inévitables de la Guerre."¹ Burlamaqui applies the same reasoning to prisoners of war: one ordinarily cannot kill them without being guilty of cruelty, but in some cases, such as for one's own protection, it is necessary to resort to extremes "qui hors de ces circonstances seroient tout-à-fait criminelles."²

According to Burlamaqui, the right of war implies the right of unlimited destruction of the enemy: "Cet état [the state of war] anéantissant par lui-même l'état de Société, quiconque se déclare notre Ennemi nous autorise par là à agir contre lui par des actes d'hostilité poussés à l'infini, et aussi loin qu'on le juge à propos."³ The following important passage, in apparent contradiction with the notion that there are immutable principles of right and wrong accorded by the natural law which limit the extent of control one has over the life of another, summarizes

1. Ibid.

2. Ibid., p. 231.

3. Ibid., p. 224.

Burlamaqui's general concept of war waged for a just and righteous cause:

L'Etat de Guerre où l'Ennemi s'est mis, et où il ne tenoit qu'à lui de ne pas se mettre, donne par lui-même toute permission contre lui; en sorte qu'il n'a aucun lieu de se plaindre quoi-qu'on fasse. D'ailleurs on n'est pas plus obligé, à parler à la rigueur, de respecter le Droit qu'un Ennemi a sur ses Sujets, et la fidélité qu'ils lui doivent en cette qualité, que leurs biens et leurs vies, dont on peut incontestablement les dépouiller par Droit de Guerre.¹

Armed with such a concept, a warring nation can justify any action it commits. All that is necessary is that it believe that its cause is just--a not too difficult task for a nation at war with another.

Rousseau directly opposes these concepts. It is these same ideas which he maintains justify the atrocities of war committed by the warring nations of Europe. Windenberger said of Rousseau's reaction to Grotius' third book on war: "J.-J. Rousseau a peine ici à contenir son indignation. A ses yeux le Droit positif ne peut pas plus tolérer tous ces abus [killing of women and children, lying, subterfuge, etc.] que le Droit naturel."² In an ironic contrast between the writings of the jurists which depict the peace and justice which abounds in society and the actual conditions of the people suffering from war and conquest, Rousseau writes:

1. Ibid., pp. 233-234.

2. Op. cit., p. 129.

Bien instruit de mes devoirs et de mon bonheur, je ferme le livre, sors de la classe, et regarde autour de moi; je vois des peuples infortunés gémissans sous un joug de fer, le genre humain écrasé par une poignée d'opresseurs, ... et partout le fort armé contre le foible du redoutable pouvoir des loix."¹

Rousseau disagrees, first of all, that war should be directed against all the members of the enemy state: "La guerre n'est donc point une rélation d'homme à homme, mais une rélation d'Etat à Etat, dans laquelle les particuliers ne sont ennemis qu'accidentellement, non point comme hommes ni même comme citoyens, mais comme soldats."² According to many commentators, this new concept of war put forth by Rousseau was accepted by many political thinkers and "enriched the theory of international law."³ The purpose of war, says Rousseau, is to destroy the enemy state and one has the right to kill those defending that state as long as they are bearing arms; "mais sitôt qu'ils les posent et se

1. (EASP) Oeuvres complètes, III, p. 609.

2. (CS) Oeuvres complètes, III, p. 357.

3. Arthur Nussbaum, A Concise History of the Law of Nations (New York: The Macmillan Company, 1954), p. 139. See also Windenberger, op. cit., p. 134. According to Lassudrie-Duchène this new concept by Rousseau was accepted by those who followed him for two basic reasons: "Il satisfait d'abord notre raison, notre esprit de justice et d'humanité, l'élémentaire bon sens qui nous démontre que la guerre doit laisser en paix les habitants désarmés; il est ensuite conforme aux nécessités historiques, il réalise les conditions d'applicabilité indispensables, il s'adapte aux institutions et aux moeurs." (Op. cit., p. 44.)

rendent, cessant d'être ennemis ou instrumens de l'ennemi, ils redeviennent simplement hommes et l'on n'a plus de droit sur leur vie."¹ Rousseau would thus condemn the principle of Burlamaqui that war implies the right of unlimited destruction of the enemy. The former maintains that it is even possible to kill the state without killing any of its members, and concludes: "La guerre ne donne aucun droit qui ne soit nécessaire à sa fin. Ces principes ne sont pas ceux de Grotius; ils ne sont pas fondés sur des autorités de poètes, mais ils dérivent de la nature des choses, et sont fondés sur la raison."²

This assertion by Rousseau indicates how closely his ideas on the law of nations are related to natural law or the basic humanitarian principles which man can deduce by his reason. It is interesting to note that whereas Burlamaqui maintains his system is based on natural law revealed by reason, his ideas on war compromise the principles of this law. According to reason, it is evident that the right to massacre unarmed civilians is not a right accorded by natural law. It is purely an arbitrary convention founded on the usage of warring, power-hungry nations, and part of the law of nations advocated by Grotius. Unlike

1. (CS) Oeuvres complètes, III, p. 357.

2. Ibid., p. 358.

Burlamaqui, Rousseau admits no such right, and resolutely upholds the principle, in harmony with reason and natural law, that man does not have the right to wantonly take the life of his fellow man: "C'est là qu'elle [the law of nature] lui crie qu'il ne lui est permis de sacrifier la vie de son semblable qu'à la conservation de la sienne, et qu'elle lui fait horreur de verser le sang humain sans colère, même quand il s'y voit obligé."¹

Burlamaqui, of course, does not wish to establish ruthless principles by advocating the unlimited right of destruction, but he acquiesces to inhumane principles by way of compromise and too close adherence to the concepts of the leading authority of his day on war.² Burlamaqui's compromising position is also reflected in his style of presentation of the rules of war. There is a constant effort on his part to qualify his principles and then to point out exceptions to them, underscored by such words as en général, mais, cependant. For example, he states that war gives unlimited right to destruction, but he suggests that this right be used according to humane principles; nevertheless, he ends up concluding that if it is not it is only a misfortune of war.

1. (EASP) Oeuvres complètes, III, p. 602.

2. Other examples of this type of compromise include his admission that one can kill by cannonfire women and children who might be aboard the ship of a corsair if no other

Burlamaqui's general intent, that of lessening the cruelty of war, concurs with that of Rousseau: "Autant qu'il est possible, et que nôtre défense et nôtre sureté pour l'avenir nous le permettent, il faut temperer les maux que l'on a fait à un Ennemi, par les principes de l'humanité."¹ War in itself should be avoided at all honorable cost, or at least be rendered as humane as possible: "La Guerre étant en elle-même un très grand mal, il est de l'intérêt commun des Nations de ne pas se priver volontairement des moyens que la prudence leur présente pour en moderer les rigueurs, et en adoucir les effects."² One of the best means to reduce these effects is for the warring nations to keep their word, to observe the truces and treaties they make. Burlamaqui seeks to alleviate the atrocities and suffering of war by using the same method as his predecessors which consists of formulating an elaborate system of rules by which wars should be fought. Rousseau rejects the method because he can see that although these rules are designed to lessen the evil effects of war, due to the influence of arbitrary

means but the destruction of the ship is feasible to punish the corsairs. (Droit politique, p. 224.) He also states that carnage and pillage, although contrary to natural law, are acceptable among nations and that a neutral nation does not have the right to punish the acts of a pillaging nation. (Ibid., pp. 226-227.)

1. Ibid., p. 225.

2. Ibid., p. 267.

usage established by the powerful nations of Europe, they often condone and perpetuate these evils.

Burlamaqui asserts that there are certain causes which justify and others which do not justify war. He maintains that an offensive war is not necessarily wrong just as a defensive war is not always right. He points out that many unjust wars are waged under the pretense that they are defensive wars. There are offensive wars caused by such acts as mistreating the ambassador of a country or the subject of a nation which render a war just, while "le Prince qui a fait tort et qui ne veut pas le reparer fait une Guerre Défensive, mais injuste. La Guerre Offensive n'est donc injuste que lorsqu'elle est entreprise sans une cause légitime, et alors la Guerre Défensive, qui dans d'autres occasions pourroit être injuste, devient juste."¹

According to both Burlamaqui and Rousseau, "la guerre a besoin d'une déclaration."² The former writes: "On doit encore avant de la faire, la déclarer formellement à l'Ennemi. Cette déclaration de Guerre considérée en elle-même et indépendamment des formalités particulières de chaque Peuple, n'est pas simplement du Droit des Gens, à prendre ce mot dans le sens de Grotius, mais du Droit même Naturel."³

1. Ibid., p. 203.

2. (EASP) Oeuvres complètes, III, p. 607.

3. Droit politique, p. 219.

Rousseau insists on the necessity of a declaration of war because according to him war is always the result of the free consent of the belligerent, warring nations. Thus if one country attacks another and the country attacked does not defend itself, a state of war does not exist, only a state of violence and aggression. His definition of war reflects this opinion: "J'appelle donc guerre de puissance à puissance l'effet d'une disposition mutuelle, constante et manifestée de détruire l'Etat ennemi, ou de l'affaiblir au moins par tous les moyens qu'on le peut."¹

Since a state of war cannot exist among individuals, Rousseau excludes duels and singular combat from constituting war: "Quand aux Duels, défis, cartels, appels en combat singulier, outre que c'étoit un abus illegitime et barbare d'une constitution toute militaire, il n'en resultoit pas un véritable état de guerre."² Burlamaqui discards as superstition the notion that the outcome of singular combat constitutes the judgment of God and that the victor always supports the cause of right, but unlike Rousseau he does not entirely reject the concept of singular combat to decide the outcome of war:

On peut dire avec quelque apparence de raison, qu'il vaut mieux s'engager même dans une Guerre sanglante, que de risquer d'un seul coup la liberté et le salut de l'Etat par un combat décisif. ... Cependant on

1. (EASP) Oeuvres complètes, III, p. 607.

2. Ibid., p. 602.

peut dire, que si l'on n'a d'ailleurs aucune apparence de bon succès, ou qu'il ne s'agisse pas de la liberté ou du salut de l'Etat, il semble que rien n'empêche que l'on n'embrasse ce parti; comme le moindre de deux maux auxquels on est inévitablement exposé.¹

Burlamaqui treats the rules and principles of war in much greater detail than does Rousseau. He expounds, for example, the concept of the obligation involved in letting troops pass through the territory of a neutral nation; he broaches the subject of religious conflicts, and classifies the different kinds of wars; he treats the question of who has or has not the right to wage and declare war, and discusses at some length the question of reprisals.² Two subjects relative to war which both Burlamaqui and Rousseau do treat, however, are the maintenance of troops and the treatment of prisoners or slaves.

Armies. Rousseau and Burlamaqui have the same ideal in mind in regard to the maintenance of an army within the state. This is the notion of the citizen-soldier as it existed in their own country and among the early Romans, a notion in harmony with their concepts of devotion and patriotism to one's country, of the virtues of clean living, discipline and exercise for citizens who might be needed as soldiers.

1. Droit politique, p. 218.

2. Ibid., pp. 194-208.

Burlamaqui writes: "Il faut ... que les Citoyens soient formés de bonne heure au travail et à la vertu. Le luxe, la mollesse et les plaisirs énervent les forces du Corps, en même tems qu'ils affoiblissent le courage."¹ The sovereign should provide that the education of young people include discipline and exercises for the body which will strengthen it for military service. It is obvious that Burlamaqui has in mind an army composed of citizens who serve as soldiers only as long as the nation is at war, not a standing army of trained foreign mercenaries. Thus all able-bodied men must be trained properly to defend their country:

Comme la force et la valeur des Troupes dépend en bonne partie de l'habitude où elles sont des Exercices Militaires, le Souverain doit, même en tems de paix, former les Citoyens à ces exercices, afin qu'ils soient plus propres dans l'occasion à supporter les fatigues de la Guerre, et à en remplir les différentes fonctions."²

He affirms as well that these citizens when called to serve their country should be paid exactly that which is owed them, that the sick among them be taken care of, and that they should be instructed in the principles of religion and the duties deriving therefrom.

Rousseau writes to the people of Poland: "Tout citoyen doit être soldat par devoir, nul ne doit l'être par

1. Ibid., p. 185.

2. Ibid., p. 182.

métier. Tel fut le système militaire des Romains tel est aujourd'hui celui des Suisses; tel doit être celui de tout Etat libre et surtout de la Pologne."¹ He is especially critical of the standing armies employed by the powers of Europe: "Les troupes réglées, peste et dépopulation de l'Europe, ne sont bonnes qu'à deux fins: ou pour attaquer et conquérir les voisins ou pour enchaîner et asservir les Citoyens."² Referring to mercenaries, he disdainfully comments: "Vous saurez encore que, dans ce métier même, il ne s'agit plus de courage ni de valeur, si ce n'est peut-être auprès des femmes; qu'au contraire le plus rampant, le plus bas, le plus servile, est toujours le plus honoré."³ In the Projet de Constitution pour la Corse he lauds the valor of the Swiss armies, but notes their corruption when they hire themselves out as mercenaries.

Like Burlamaqui he advocates the exercising and disciplining of citizens to make a good army: "Une bonne milice, une véritable milice bien exercée est seule capable de remplir cet objet."⁴ He proposes that instead of having a standing army, Poland should have a militia made up of citizens who serve in time of war. It should imitate Switzerland

1. (CGP) Oeuvres complètes, III, p. 1014.

2. Ibid., pp. 1013-1014.

3. Emile, p. 582.

4. (CGP) Oeuvres complètes, III, p. 1014.

where every married man is given a soldier's equipment and periodic drilling and exercises; the soldier is not paid until he leaves the region where he lives and then he is supplied his food and ammunition; no one is permitted to take the citizen-soldier's place and perform his duty for him.¹ He suggests that public opinion be changed in Poland with regard to their soldiers--the latter should be respected as citizen-soldiers, not considered as brigands: "Pour cela il importe que dans le choix des officiers on n'ait aucun egard au rang, au credit et à la fortune, mais uniquement à l'expérience et au talent."² He proposes also that the cavalry be made up of the nobility, but that it should be formed and trained in the same manner as the militia.³ A militia composed of patriotic citizens can provide defense for the people not only against foreign aggression but against the executive power as well. When the king has at his command a militia composed of the citizens of the country instead of a standing army of mercenaries, he can be trusted to be the commander in chief of the army.⁴

1. Ibid., p. 1015.

2. Ibid., p. 1016. Despite his respect for the soldier, Rousseau still maintains that soldiers should never be left alone to fend for themselves, nor to have inspection over the citizenry: "Toujours subordonnés et surveillés, ils ne doivent être que des instrumens aveugles dans les mains de leurs officiers." (Ibid., p. 1014.)

3. Ibid., pp. 1017-1018.

4. Ibid., p. 1016.

Captives and Slaves. Except in cases of absolute necessity, "on ne doit donc pas directement et de propos délibéré ôter la vie ni aux Prisonniers de Guerre, ni à ceux qui demandent quartier, ni à ceux qui se rendent."¹ Burlamaqui emphasizes also that hostages who cannot meet the conditions under which they were taken prisoner cannot be killed, although they can be retained indefinitely as prisoners of war. As was pointed out, he does concede, however, that some conditions justify the killing of prisoners.

Rousseau declares, on the contrary, that there are certain immutable rights accorded to man by the natural law which cannot be impinged upon even during time of war. One of these rights applies to taking the life of prisoners of war. When the state of war ceases to exist, or when the enemy has been disarmed, says Rousseau, the victor no longer has the right to take his opponent's life.² Criticizing those who advance the contrary, he writes:

On auroit horreur d'un Prince qui feroit massacrer ses prisonniers. On s'indigne même contre ceux qui les traittent mal et ces maximes abominables qui revoltent la raison et font fremir l'humanité

1. Burlamaqui, Droit politique, p. 231.

2. Rousseau might have been influenced by Montesquieu in this idea. The latter wrote: "Il est clair que, lorsque la conquête est faite, le conquérant n'a plus le droit de tuer, puisqu'il n'est plus dans le cas de la défense naturelle, et de sa propre conservation." (Op. cit. [Bk. X, Ch. 3], p. 147.) "Il est faux qu'il soit permis de tuer dans la guerre autrement que dans le cas de nécessité." (Ibid. [Bk. XV, Ch. 2], p. 255.)

ne sont plus connues que des Jurisconsultes qui en font tranquillement la base de leurs systèmes Politiques et qui au lieu de nous montrer l'autorité souveraine comme la source du bonheur des hommes osent nous la montrer comme le supplice des vaincus.¹

Rousseau criticizes Grotius for stating that prisoners of war who promise to become slaves must keep their word: "Le prétendu droit d'esclavage auquel sont asservis les prisonniers de guerre est sans bornes. Les Jurisconsultes le décident formellement. Il n'y a rien, dit Grotius, qu'on ne puisse impunément faire souffrir à de tels esclaves."² On the contrary, Rousseau contends that this pretended right of slavery is not a right at all. A pact of slavery made by a prisoner of war need not be kept. He even asserts that according to natural law the slave has the right to kill his master: "La tyrannie et l'esclavage sont manifestement un état de guerre et il est aisé de démontrer qu'un esclave qui tue son maître ne pèche en cela ni contre la loi naturelle ni même contre le droit des gens."³ Since liberty is a natural right which cannot be alienated, slavery is illegitimate from all points of view. It cannot be derived from the right to take life during war: "En supposant même ce terrible droit de tout tuer, je dis qu'un

1. (EASP) Oeuvres complètes, III, pp. 614-615.

2. Ibid., p. 615.

3. (FP) Oeuvres complètes, III, p. 523.

esclave fait à la guerre ou un peuple conquis n'est tenu à rien du tout envers son maître, qu'à lui obéir autant qu'il y est forcé."¹ Nor can the right of slavery be derived from the free consent of a people to sell themselves as they would sell their property. Liberty unlike property, is inalienable. Even if people had such a right, it could not apply to their children: "La liberté étant un don qu'ils tiennent de la Nature en qualité d'hommes, leurs Parens n'ont eu aucun Droit de les en dépouiller. ... Les Jurisconsultes qui ont gravement prononcé que l'enfant d'une Esclave naîtroit Esclave, ont décidé en d'autres termes qu'un homme ne naîtroit pas homme."²

Rousseau's ideas on slavery and conquest are similar to those of Montesquieu and Burlamaqui except that Rousseau admits no exceptions to the illegitimacy of slavery, whereas Montesquieu and Burlamaqui while condemning slavery imposed by conquest admit such exceptions. Montesquieu states, like Rousseau, that slavery is even less legitimate in regard to the children of slaves: "Si un homme n'a pu se vendre, encore moins a-t-il pu vendre son fils qui n'était pas né. Si un prisonnier de guerre ne peut être réduit en servitude, encore moins ses enfants."³ Unlike Rousseau, however, he

1. (CS) Oeuvres complètes, III, p. 358.

2. (DI) Oeuvres complètes, III, p. 184.

3. Op. cit. [Bk. XV, Ch. 2], p. 256.

concedes that slavery by conquest might be right under certain conditions:

On n'a droit de réduire en servitude que lorsqu'elle est nécessaire pour la conservation de la conquête.

... Il faut que le peuple esclave puisse devenir sujet. L'esclavage dans la conquête est une chose d'accident. ... Ainsi, le conquérant qui réduit le peuple en servitude doit toujours se réserver des moyens (et ces moyens sont sans nombre) pour l'en faire sortir.¹

Montesquieu's sentiments reflect the same spirit as those of Rousseau: only the latter's intransigence in admitting any exceptions to slavery is missing.

The same can be said in comparing Rousseau's and Burlamaqui's ideas on slavery and conquest. Whereas Burlamaqui asserts that slavery is not ordinarily a legitimate foundation of sovereignty, he concedes that in the case of a just war the victor can legitimately extend his authority over the conquered people without their consent: "On peut sans injustice profiter de la supériorité que donne la victoire, pour lui extorquer un consentement qu'il nous devoit donner volontiers et de lui-même."² Nevertheless, like Montesquieu, he is of the opinion that the conquered people should be free, after a period of time, to decide if they want to accept their rulers and participate in full

1. Ibid. [Bk. X, Ch. 3], p. 147. He sums up his attitude toward conquest by stating: "Je définis ainsi le droit de conquête: un droit nécessaire, légitime et malheureux, qui laisse toujours à payer une dette immense, pour s'acquitter envers la nature humaine." (Ibid. [Bk. X, Ch. 4], p. 149.)

2. Droit politique, p. 250.

citizenship with their captors. Such was the policy of the ancient Romans "qui confondoient, pour ainsi dire, les Vaincus avec les Vainqueurs, en se hâtant de les incorporer avec eux et de leur faire part de leur liberté et de leurs avantages."¹ In the case of an unjust war, Burlamaqui states: "Une longue possession accompagné d'un Gouvernement équitable, peut légitimer la Conquête la plus injuste dans ses commencemens et dans son principe."² Rousseau disagrees:

Que par le laps de tems une violente usurpation devienne enfin un pouvoir legitime, ... c'est ce que beaucoup de savans hommes ont osé soutenir et à quoi il ne manque d'autre autorité que celle de la raison. Bien loin qu'une longue violence puisse à force de tems se transformer en un gouvernement juste, il est incontestable au contraire, que quand un Peuple seroit assés insensé pour accorder volontairement à son chef un pouvoir arbitraire, ce pouvoir ne sauroit être transmis sur d'autres générations."³

By admitting exceptions to his general condemnation of servitude established by conquest, Burlamaqui, like Montesquieu, is taking into account the long history of the practice of nations in conquering other nations. To dogmatically insist that any dominion established by conquest, regardless of the length of time that dominion has been exercised, is illegitimate, would be to establish a revolutionary principle leading to possible chaos, for most if not all

1. Ibid., p. 253.

2. Ibid., p. 251.

3. (CS 1st V) Oeuvres complètes, III, pp. 303-304.

the nations of Europe trace their origins to one form of conquest or another.

Discounting his exceptions to the illegitimacy of conquest under certain conditions, Burlamaqui is one with Rousseau and Montesquieu in condemning slavery:

Personne ne peut se dépouiller de sa liberté jusqu'à se soumettre à une Puissance arbitraire, qui le traite absolument à sa fantaisie; ... si cela est vrai, par rapport à un Particulier qui se feroit esclave, bien moins encore un Peuple entier a-t-il ce Pouvoir, dont chacun de ceux qui le composent est entièrement destitué."¹

If it seems that this thought contradicts his statement that a just war gives the victor the right to establish dominion over the vanquished, it might be pointed out that he speaks in this passage of total or absolute renunciation of one's liberty. This is never permitted: "Ce seroit renoncer à sa propre vie, dont il n'est pas le maître; ce seroit renoncer à son devoir, ce qui n'est jamais permis."² The dominion established over a conquered people always implies limits. The liberally intransigent Rousseau would condemn the distinction, no doubt pointing out that once a conqueror is given dominion over another nation the distinction between abject slavery and servitude with limits is often tenuous. Nevertheless, Burlamaqui maintains that even a conquered nation reduced to servitude retains certain rights accorded

1. Droit politique, p. 42.

2. Ibid.

by the natural law which cannot be taken from it. In regard to the supposition that people can give their ruler the power to treat them as he wills, without reserving for themselves the right to resist in any case, Burlamaqui replies: "C'est ce qu'aucun Peuple n'a jamais fait, ni n'a pu faire."¹

Rousseau's and Burlamaqui's ideas on captives and slaves reflect the same general trend as their political concepts treated in the present chapter of this study. Their thoughts on sovereignty, government and international relations evince a similar humane spirit, a common regard for justice--condemnation of slavery, desire to lessen the evil effects of war, concern for more justice in international relations, agreement on the people's right to overthrow a tyrant; but they also evidence Rousseau's originality, his greater tendency to depart from traditional political principles, his closer attention to equity than to precedent. Just as he rejects slavery under any conditions, or the killing of prisoners of war for any reason, so does he refuse to accept the arbitrary law of nations recognized by the nations of his day, or the transfer of sovereignty with its usual curtailment of freedom from the people to their representatives.

1. Ibid.

CHAPTER VI

CONCLUSIONS

There is much similarity in the moral and political ideas of Rousseau and Burlamaqui. There are differences as well, but these differences are not so great as to warrant the conclusion that there is little in common in the works of the two Genevan writers. On the contrary, it can be concluded that the major currents or the underlying spirit of the moral and political concepts of the two are largely the same.

The similarity in their ideas is mainly attributable to common sources of influence, as Derathé and Del Vecchio have indicated. There is a notable influence on each writer from his native city, as Faguet, Lanson and Jost have pointed out. They share a predilection for many of the political ideals of the ancient city-states of Rome and Sparta, ideals which they also often associate with their native land and with the simple virtues, morals and customs of these three republics. Their common political concepts reflect considerable influence from their predecessors of the natural law school and contemporary political thinkers. Their moral concepts evidence the influence of the seventeenth-century moralists and philosophers such as Descartes and Pascal,

the basic principles of their common Protestant heritage as Vallette indicated, and many of the prevailing currents of thought of their own century. There are also a few of Rousseau's ideas which indicate a direct influence by Burlamaqui on Rousseau.

Some of the differences in their thought can be noted in Burlamaqui's affinity for the basic moral concepts and attitudes toward society typical of the major classical writers of the seventeenth-century, whereas the nature-loving Rousseau, while agreeing with several of these concepts and attitudes, often tends to gravitate to new trends of thought typical of his own century. There are numerous differences in their political thought which lead one to conclude that Burlamaqui follows more closely the traditional, political concepts of his predecessors of the natural law school than does Rousseau, even though the former sometimes approaches a few of the political ideas which Rousseau conceives by carrying the liberal trends initiated by Barbeyrac, Burlamaqui himself and others to their logical conclusions. There are other differences in their ideas, peculiar to each writer, which tend to show the greater originality of Rousseau's moral and political thought. An enumeration of these differences and similarities in their ideas by way of summary of the concepts treated within the text of this study will bear out these observations.

Some of the ideas shared by Burlamaqui and Rousseau which reflect the morals and government of their Protestant, native city include their elevated concept of the family and of marriage and their disapproval of celibacy, their preference for elective, aristocratic government which gives the people some part in governing themselves, and their notion of a balanced or mixed form of government similar to that of the city of Geneva. They also agree, as did Calvin, that the sovereign has the right and duty to regulate the religious affairs of the state. They advocate a confederation of small nations for mutual defense such as was formed by the Swiss states of their day, and they have similar views on training citizens to be citizen-soldiers for the defense of their country. This latter concept along with other ideals such as shunning luxury and opulence and cleaving to simple virtues were also promulgated by many of the ancient republics. Burlamaqui and Rousseau were undoubtedly influenced in these various concepts from other sources as well, but the influence from their native city is undeniable.

The similar ideas of the two writers which were common to the theorists of the natural law school and a few other major political writers of their time include the idea of tracing man's development back to a state of nature, the notion that the social contract, not paternal authority or the divine right of kings, is the only legitimate foundation of political authority, and the idea that there exist

absolute, natural laws of justice which civil law must not contradict and which should serve as the model or foundation of civil law. Their similar or common belief in the existence of absolute laws or standards of justice is to be noted in Burlamaqui's concept of right reason, in Rousseau's concept of conscience and the general will which are always right. Like many of their predecessors and contemporaries, including Montesquieu, they insist that liberty comes from obedience to law; like Locke, they uphold the importance of the right of private property; they affirm that sovereignty must be absolute; they disapprove of government by the unorganized multitude, but agree that sovereignty originates with the people. Like Montesquieu, they maintain there are three basic forms of government best suited for different kinds and sizes of countries, and they both offer plans and suggestions for alleviating the evil effects of war.

Concepts shared by Burlamaqui and Rousseau which evidence the influence of philosophers of their own century as well as those of the seventeenth century include the optimistic eighteenth-century notion of the basic goodness of man and the propitious idea that God created a beneficent natural environment for the felicity and well-being of his creatures. Convinced of the natural goodness of man, they both assert that the evil men do is attributable to error, ignorance and weakness; they stress the importance of self-

love as the means of procuring man's joy and perfection, and maintain that the purpose of government is to promote the happiness and well-being of the people it serves. Despite his praise of the natural man, Rousseau agrees with Burlamaqui and many philosophers of the seventeenth and eighteenth centuries that true happiness is only obtained in the social state. Burlamaqui shows the influence of Pascal in his defense of the existence of God by advancing the arguments of the pari to unbelievers; Rousseau's emphasis on conscience in the discernment of truth also suggests the influence of Pascal. The probable influence of Descartes on both writers is manifest in their definitions of man, a dual being composed of body and soul, differing from animals by the possession of this immortal soul and the ability to reason and perfect himself. They agree with Descartes as well that passions must be subordinated to reason, and they both rely on reason as an important part of their moral, religious and political systems. Their similar defense of the existence of God and the basic tenets of Christianity is an indication of their fundamental Christian orientation.

There is a common emphasis on morals in the works of Rousseau and Burlamaqui which affects their political concepts in a manner that often differentiates these concepts from those of their predecessors and contemporaries. Thus, although Burlamaqui assigns a minor role to moral instinct in his political system, unlike his predecessors, he

insists with Rousseau that it is a necessary part of man's constitution which aids him to discern truth from error and without which the concept of the universal obligation of natural law would be incomplete or imperfect. They both profess a high regard for truth and praise virtuous conduct; they stress the necessity of freedom for the individual coming from adherence to moral values and the self-discipline such adherence entails. Their insistence on morals being a necessary part of law and government is a factor in their founding obligation principally on moral rather than physical necessity to obey law; they agree that the only true kind of obligation is that which comes from within the individual.

This latter concept along with several others indicates the probability of the direct influence of Burlamaqui on Rousseau. Burlamaqui makes inner obligation produced by reason one of the foundations of his system. Rousseau, while not founding obligation on reason, makes of inner obligation deriving from the general will the foundation of his system. As Gagnebin and Del Vecchio suggested, there are elements of Rousseau's concept of the general will in Burlamaqui's similar concept; the latter emphasizes that the common good is the highest good and that a state differs from a multitude in that it is animated by one will. Other ideas which indicate the possibility of Burlamaqui's influence on Rousseau include their similar views on civil religion and

the control the sovereign has in forming the heart and minds of his subjects through public education and religious instruction. There are elements of Burlamaqui's concept of a balance of powers which point to the likelihood of his influence on Rousseau. The latter was also probably influenced by Burlamaqui's concept of moral instinct.

The differences in their thought which generally show Burlamaqui to be closer to the ideals of certain seventeenth-century philosophers include his consistent praise of society and his rejection of the utility of passions. Rousseau criticizes the refinement and corruption fostered by society, and like his contemporary Vauvenargues, considers passions to be necessary for man's development, even though he agrees with Descartes and Burlamaqui that they must be subordinated to reason. Unlike Burlamaqui, Rousseau blames society for the corruption in man of the beneficial sentiment of self-love to amour-propre. Burlamaqui, like most seventeenth-century moralists, praises the arts and sciences which are promoted by an enlightened society; he extols reason, like Descartes, and makes it the ultimate guide of man, the imperative which dictates to man his duties. Rousseau, like Pascal, places conscience above reason, making it the infallible revelator of right and wrong. Burlamaqui's moral and political concepts generally reflect the classical concept of moderation, the juste milieu; Rousseau is not always

so restrained, and in his criticism of the evils in society often lashes out with a passion that is neither moderate nor objective.

The differences in their political thought which demonstrate Burlamaqui's closer ties to the natural law school of his predecessors include his concept of a natural man not greatly different from modern man living in society; Rousseau's man in the original state of nature is an instinctual being, almost sub-human. Rousseau rejects a natural law revealed by reason alone; Burlamaqui makes it the foundation of his political system. Burlamaqui accepts his predecessors' concept of a double contract and the transfer of sovereignty from the people to their chosen leader; Rousseau rejects the notion, insisting that sovereignty must remain with the people. Rousseau gives the people a greater role in determining their own affairs; Burlamaqui, while approaching Rousseau's ideas on popular sovereignty by declaring that the people must decide in the last analysis what will be their ultimate destiny, remains midway between the advocates of the absolute, unlimited power of the sovereign over his subjects and the more democratic Rousseau. Rousseau makes a distinction between government and sovereignty; Burlamaqui, like most of his contemporaries and predecessors, does not. Rousseau rejects the law of nations accepted by the powerful European nations, and

proposes the confederation of states as the only solution to the problem of conquest and invasion; Burlamaqui, while admitting the efficacy of a confederation for the protection of weak countries, accepts the commonly held notion of a law of nations deriving from natural law as the best means of maintaining peace and harmony among sovereign states. Burlamaqui, like Grotius, implies that war entails unlimited destruction of the enemy nation; Rousseau repudiates the concept, contending that war is a relationship between states, not individuals, and that one has not the right to kill any member of the enemy nation except those who are armed to do battle. Rousseau admits no exception to the illegitimacy of slavery; Burlamaqui condemns slavery, but concedes the legitimacy of servitude under certain conditions.

Other differences in their ideas, attributable to numerous factors relating to the individuality of each writer, include Burlamaqui's notion of God's intelligence being attributed to reason, while Rousseau contends that God is intuitively intelligent and has no need to reason. Rousseau states that the general will of the people directs government or the people's representatives; Burlamaqui says the people's representatives or the sovereign directs the general will of the people. Rousseau's ideas on public education emphasize molding the individual to think like the

group more than do Burlamaqui's. Rousseau excludes Christianity as a civil religion; Burlamaqui does not. Rousseau says civil religion is not concerned with man's salvation in the next life; Burlamaqui asserts that civil religion should promote the eternal salvation of the individual. Rousseau sometimes emphasizes the power of the state over private property in a manner which weakens the latter; Burlamaqui consistently upholds the individual's right to possess private property, maintaining that property rights do not derive from the sovereign. Burlamaqui's concept of a balance of powers divides sovereignty; Rousseau consistently maintains that sovereignty remains always with the people and cannot be divided.

With these observations on the similarities and differences in the thought of Burlamaqui and Rousseau in mind, a consideration of the comparative opinions referred to in the introduction of this study, shows that a correct evaluation of the relation between the two lies somewhere in between the extremes proposed by scholars treating the question. Early scholars such as Lanson, Faguet, Borgeaud and Beaulavon tended, as Lassudrie-Duchêne asserted, to exaggerate the influence of Burlamaqui on Rousseau. Contemporary critics refuting the opinion of these early scholars often exaggerate the differences in the two writers' ideas; they overly minimize the influence of Burlamaqui on

Rousseau and the importance of a comparison of their respective ideas.

There is validity in Vallette's assertion that Burlamaqui's ideas on the state of nature, natural law, the social contract, the general will and popular sovereignty are similar to Rousseau's. Gagnebin has shown that there are important differences in the two writers' ideas on these subjects in order to prove that Burlamaqui can hardly be called the political master of Rousseau. His point is well taken; nevertheless, the similarities in their political ideas outweigh the differences. Despite Rousseau's rejection of a double contract, his notion of the social contract is more similar than dissimilar to Burlamaqui's. A relatively minor consideration is Gagnebin's assertion that their concept of a state of nature differs inasmuch as Burlamaqui stresses man's dependence on God in that state and Rousseau does not. A more important difference in their concepts is Rousseau's depiction of the natural man as an instinctual, almost sub-human being; yet, despite this fact, their basic ideas on the state of nature are largely similar. The same is true of the majority of their moral and political ideas.

Whereas Derathé's and Del Vecchio's assertion that the similarity in the two Genevan writer's political ideas is due mainly to common sources is accurate, their

contention that the influence of Burlamaqui on Rousseau is negligible or of little importance is invalidated when one compares the ideas of Burlamaqui and Rousseau on obligation and the ramifications of this concept. De Félice states that Burlamaqui's unusual notion of inner obligation was not held by any of his contemporaries or predecessors, and yet Rousseau also stresses the importance of the concept, making it one of the foundations of his notion of the general will. Their similar ideas on the necessity of obligation from within the individual directly affect Burlamaqui's and Rousseau's concepts of obligation, sovereignty, civil and natural law, public education and civil religion, and indicate the importance of the probable influence of Burlamaqui's initial concept on both his and Rousseau's political systems.

The other ideas on morals and politics treated in this dissertation which have not been compared by other scholars substantiate the conclusion that there is much agreement in Rousseau's and Burlamaqui's thought. A comparison of this thought contributes significantly to an understanding of the sources and nature of Rousseau's ideas.

ABBREVIATIONS

The following abbreviations of Rousseau's political works contained in the third volume of the Pléiade edition of Rousseau's complete works have been used in the footnotes of this dissertation:

- (DS) -- Discours sur les Sciences et les Arts
- (DI) -- Discours sur l'Origine et les Fondemens de l'Inégalité parmi les Hommes
- (DEP) -- Discours sur l'Economie politique
- (CS) -- Du Contrat social ou Principes du droit politique
- (CS 1st V) -- Du Contrat social ou Essai sur la forme de la République (1st version)
- (FP) -- Fragments politiques
- (EASP) -- Ecrits sur l'Abbé de Saint-Pierre
- (LDM) -- Lettres écrites de la Montagne
- (PCC) -- Projet de Constitution pour la Corse
- (CGP) -- Considérations sur le Gouvernement de Pologne

The orthography in this edition of Rousseau's works is, like that of the editions of Burlamaqui's works cited in this study, often variant from current norms. Not only is the spelling and accentuation different than modern French, but sometimes the same word is written differently (e.g., *particuliere*--*particulière*; see p. 158 of this dissertation).

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